

The Honorable Barbara J. Rothstein

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

BOFI FEDERAL BANK, a federally chartered
banking institution,

Plaintiff,

v.

ADVANCE FUNDING LLC; KIRK A.
TOVEY, individually and as trustee of the
KIRK A. TOVEY REVOCABLE TRUST; and
SETTLEMENT COLLECTION SERVICE,
LLC,

Defendants.

NO. 2:14-cv-00484-BJR

JOINT PRETRIAL STATEMENT

A. Statement of the Case.

Plaintiff BofI Federal Bank (“BofI”) filed this lawsuit on April 2, 2014, alleging that Defendants Advance Funding LLC (“Advance”), Kirk A. Tovey, individually and as trustee of the Kirk A. Tovey Revocable Trust (“Tovey”), and Settlement Collection Service, LLC (“SCS”) had interfered with an assignment agreement that BofI had previously entered into with lottery winner Sheena Venzant, and were unjustly enriched when they received a valuable benefit (a lottery income stream that Ms. Venzant assigned to them) to which BofI was entitled. (Dkt. 1.) BofI asserted claims against Advance, Tovey and SCS for tortious interference with

1 contract, unjust enrichment, and declaratory judgment. (*Id.*) On October 7, 2014, Defendants
2 filed an answer denying BofI's claims, and Advance asserted a counterclaim against BofI for
3 tortious interference with contracts or business expectancies with Tovey and SCS. (Dkt. 24.)
4 On October 28, 2014, BofI filed an answer denying Advance's counterclaim. (Dkt. 25.)

5
6 Defendants filed a motion for summary judgment on all of BofI's claims on February
7 19, 2015. (Dkt. 29.) The parties subsequently stipulated to limit the scope of the motion to
8 encompass only the argument that BofI's tortious-interference claim failed as a matter of law
9 because its lottery assignment agreement with Ms. Venzant was unenforceable since BofI had
10 not obtained a state court order pursuant to RCW 67.70.100(2)(a) approving the assignment.
11 BofI opposed Defendants' motion for summary judgment (Dkt. 38), but the Court granted the
12 motion on April 28, 2015 (Dkt. 42). The Court subsequently granted summary judgment for
13 Defendants on BofI's unjust-enrichment and declaratory-judgment claims (Dkt. 63), and
14 granted summary judgment for BofI on Advance's counterclaim (Dkt. 83).

15
16 BofI appealed the Court's orders granting summary judgment against it, and the Ninth
17 Circuit reversed on December 11, 2017, holding that "[b]ecause the validly formed BofI
18 Agreement violated neither the letter nor the spirit of the Washington statute, it was not
19 unenforceable as contrary to public policy." *BofI Federal Bank v. Advance Funding LLC*, No.
20 16-35006, 705 Fed. Appx. 668, 669 (9th Cir. Dec. 11, 2017). Advance did not appeal this
21 Court's dismissal of its counterclaim against BofI.
22

23 On June 15, 2018, the Court granted a motion by Advance's counsel to withdraw as
24 attorneys of record for Advance. (Dkt. 98.) On August 20, 2018, the Court entered an order of
25 default against Advance. (Dkt. 104.) On September 20, 2018, Tovey and SCS moved for
26
27

1 summary judgment on all of BofI's claims against them. (Dkt. 110.) BofI opposes that motion.
2 (Dkt. 114.)

3 **B. Undisputed Facts.**

4 On November 16, 2011, Sheena Venzant won the Washington State "Lucky for Life"
5 lottery drawing. The "Lucky for Life" game is administered through the Washington State
6 Lottery Commission and is subject to RCW ch. 67.70.
7

8 As a "Lucky for Life" winner, Ms. Venzant had the option of receiving her prize in a
9 single lump-sum payment of \$750,000, or in annual installments of \$52,000 for the rest of her
10 life. She opted for installments.

11 BofI and Ms. Venzant thereafter entered into a Lottery Payment Assignment Agreement
12 effective as of March 7, 2012 (collectively the "BofI Agreement").
13

14 Under the BofI Agreement, Ms. Venzant agreed to assign to BofI twenty-five annual
15 installment payments of \$47,000 each, allowing her to retain the remaining amount each year.
16 BofI agreed to purchase those payments for \$318,401.75.

17 The BofI Agreement provided that BofI's right to receive the installment payments
18 referenced in the BofI Agreement was subject to the condition precedent of the Thurston
19 County Superior Court issuing an order approving the assignment pursuant to RCW 67.70.100.
20

21 On March 9, 2012 and March 14, 2012, pursuant to Article 9 of the Washington
22 Uniform Commercial Code, BofI filed a UCC Financing Statement and UCC Financing
23 Statement Amendment, providing public notice of the BofI Agreement.

24 Ms. Venzant applied for the insurance policy, and obtained it with BofI's assistance (the
25 "Policy").
26
27

1 The BofI Agreement stated that the Policy would be at BofI's expense, and BofI paid
2 the first premium.

3 The Policy included a contestability period and a suicide exclusion, both running for
4 two years from the Policy's date of issuance; in other words, the Policy would not be fully
5 effective for a two-year period.
6

7
8 During its negotiations with Ms. Venzant, Advance conducted a search of court records,
9 looking for any petition or court order concerning Ms. Venzant. Advance found no such
10 records.

11 On May 21, 2013 Advance entered into a contract with Ms. Venzant (effective May 17,
12 2013) pertaining to essentially the same lottery installment payments that had been the subject
13 of the BofI Agreement (the "AF Agreement").
14

15 Advance generally relied on outside funders to complete its lottery transactions.

16 On May 21, 2013, Ms. Ray emailed Richard E. Miller III of SCS, and offered SCS an
17 opportunity to bid on the lottery income stream that was the subject of the AF Agreement.

18 The next day, SCS submitted a bid on behalf of its client, Tovey, and Advance accepted
19 it.
20

21 On June 3, 2013, Advance petitioned the Thurston County Superior Court for an order
22 approving Ms. Venzant's assignment of lottery installments to Tovey.

23 The Thurston County Superior Court issued the order sought by Advance on June 14,
24 2013.
25
26
27

On February 28, 2014, Eshel Bar-Adon, Executive Vice President and Chief Legal Officer of BofI, wrote a letter to Ms. Venzant demanding the immediate return of the \$15,000 that BofI had advanced to her along with 18% annual interest.

C. Designation of Depositions and Any Objections Thereto.

Defendants designate portions of the Advance Funding LLC 30(b)(6) deposition (Monica Ray). BofI counter-designates portions of that deposition. See Exhibit A.

D. Itemization of Damages and Summary of Other Relief Requested.

BofI seeks to recover \$663,343.97 in money damages, calculated as follows:

- \$431,993.60 in lost profit on its transaction with Ms. Venzant:
 - Closing date: June 21, 2014
 - Purchase price: \$318,401.75
 - Effective discount rate: 14.12%
 - WAL: 11.40
 - Bank cost of funds (10-year swap): \$2.27%
 - Value at cost of funds: \$750,395.35
 - Bank profit (value at cost of funds less purchase price): \$431,993.60
- Plus \$228,376.67, consisting Prejudgment interest on \$431,993.60 from June 21, 2014 to November 15, 2018 at 12% pursuant to RCW 4.56.110(5)
- Plus \$2,973.70, consisting of 18% interest on \$15,000 loaned by BofI to Ms. Venzant from February 28, 2014 to April 6, 2015

In lieu of or in addition to money damages, BofI requests a declaration that BofI is the owner and beneficiary of the Policy, and a declaration that the Thurston County Superior

1 Court's order approving the assignment of Ms. Venzant's lottery payments to Tovey is invalid
2 and should be vacated and set aside.

3 **E. Summary of Pending Motions in Limine and Oppositions Thereto.**

4 None.

5
6 **F. Statement Concerning Whether Settlement Negotiations Have Been or Would Be**
7 **Beneficial.**

8 The parties engaged in settlement discussions, but were unable to resolve their dispute.
9 The parties do not believe that further settlement discussions would be beneficial.

10 **G. Updated Estimate of Length of Trial.**

11 The parties estimate that the bench trial of this case will be completed within three court
12 days.

13
14 **H. Schedule of Witnesses and Brief Summary of Their Expected Testimony and Any**
15 **Objections Thereto.**

16 See Exhibit B.

17 **I. List of Numbered Exhibits and Any Objections Thereto.**

18 See Exhibit C.

19 **J. Proposed Jury Instructions.**

20 N/A.

21
22 **K. Proposed Verdict Forms**

23 N/A.

24 **L. Proposed Questions for Voir Dire.**

25 N/A.

M. Additional Items Set Forth in LCR 16(h) and (i).

1. Federal Jurisdiction.

The Court has jurisdiction over the subject matter of this lawsuit pursuant to 28 U.S.C. § 1332 because the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and the parties are citizens of different states.

2. Claims and Affirmative Defenses that Parties Intend to Pursue at Trial.

a. Claims.

BoFI intends to pursue claims for tortious interference with contract, unjust enrichment, and declaratory judgment at trial.

b. Affirmative defenses.

Failure to state a claim upon which relief can be granted.

Lack of proper personal jurisdiction over one or more of the Defendants.

The alleged damage, if any, resulted from alleged acts or omissions by nonparties over whom the Defendants had no responsibility or control.

Damages, if any, were not caused by, or a result of any act or omission of the Defendants, their agents or employees.

Plaintiff's claims, if any, are barred for failure to mitigate damages.

3. Issues of Law.

Plaintiff's proposed Issues of Law:

Is Tovey chargeable with knowledge possessed by SCS and Amy Schwartz by virtue of agency relationships between Tovey and SCS and between Tovey and Ms. Schwartz?

Is SCS chargeable with knowledge possessed by Ms. Schwartz by virtue of an agency relationship between SCS and Ms. Schwartz?

1 Is Tovey vicariously liable for the actions of SCS by virtue of an agency relationship
2 between Tovey and SCS?

3 Did a valid contract exist between BofI and Sheena Venzant at the time of SCS and
4 Tovey's alleged interference with said contract?

5 Did Tovey and SCS interfere with a contract between BofI and Ms. Venzant for an
6 improper purpose or by improper means?

7 Did SCS and Tovey receive a benefit at BofI's expense?

8 Do the circumstances of this case make it unjust for SCS and Tovey to retain any
9 benefit they received without payment?

10 Does the *Rooker-Feldman* doctrine bar BofI's claim for declaratory judgment?

11 Defendants' Proposed Issues of Law:

12 Should the action against the Defendants be dismissed where the Court lacks personal
13 jurisdiction since neither Defendant transacts business in this state, have no minimum contacts
14 in the state and no substantial, continuous or systematic contact within the state. All of
15 Defendants' contact regarding this matter occurred in Florida.

16 Should the tortious interference claim be dismissed where there is no evidence that the
17 Defendants had knowledge of a "valid and enforceable" contract, or that they intentionally
18 interfered with a contract causing its termination, by improper means or for an improper
19 purpose?

20 Should the unjust enrichment claim be dismissed where the Plaintiff did not confer a
21 benefit on the Defendants because, among other things, Plaintiff did not own or control the
22 lottery payment stream?

1 Should this Court decline to undo a lawfully entered Order from the Superior Court of
2 Thurston County Washington, pertaining exclusively to an issue of Washington State statutory
3 law where the Plaintiff neither intervened in, enjoin or otherwise challenge the State Court
4 proceeding, and this Court has no authority to modify the State Court Order?
5

6 DATED: October 19, 2018

7 **SAVITT BRUCE & WILLEY LLP**

8
9 By: 

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and as trustee of the Kirk A. Tovey Revocable Trust,
and Settlement Collection Service, LLC

EXHIBIT A

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

BOFI FEDERAL BANK, a federally)	
chartered banking institution,)	
)	
Plaintiff,)	No. 2:14-CV-00484-BJR
)	
vs.)	PLAINTIFF
)	
ADVANCE FUNDING LLC, KIRK A.)	
TOVEY, individually and as)	DEFENDANTS
trustee of the KIRK A. TOVEY)	
REVOCABLE TRUST; and SETTLEMENT)	JOINT
COLLECTION SERVICE, LLC,)	
)	
Defendants.)	

Video 30(b)(6) Deposition Upon Oral Examination
of
ADVANCE FUNDING LLC
MONICA L. RAY

Taken at 1425 Fourth Avenue, Suite 800
Seattle, Washington

DATE: September 22, 2015

REPORTED BY: Wade J. Johnson, RPR

CCR No.: 2574

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A P P E A R A N C E S

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STEVE EWING

SRS | Premier Realtime

Reporting & Legal Video

2200, Sixth Avenue Suite 425,

Seattle, Washington

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I N D E X

EXAMINATION BY:	PAGE
Mr. Manville	6

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EXHIBITS FOR IDENTIFICATION:

Number		PAGE
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Exhibit 2	E-mail from Monica Ray to Richard Miller III, 05/22/13	69
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Exhibit 14	E-mail from Richard Miller III to Monica Ray, 10/16/14. 167
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* * * *

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1 SEATTLE, WASHINGTON; TUESDAY, SEPTEMBER 22, 2015

2 8:58 A.M.

3 --oOo--

4

5 THE VIDEOGRAPHER: We are going on the record
6 at 8:58 a.m. on September 22nd, 2015. This is Disc No. 1 in
7 the video deposition of Monica Ray, taken by the plaintiff,
8 Case No. 2:14-CV-004884-BJR, in the matter of BOFI Federal
9 Bank vs. Advance Funding, LLC, et al., filed in the U.S.
10 District Court Western District of Washington at Seattle.

11 This deposition is taking place at Savitt
12 Bruce & Willey, 1425 Fourth Avenue, Suite 800, Seattle,
13 Washington 98101.

14 The videographer is Steve Ewing for SRS |
15 Premier Realtime Reporting & Legal Video, 2200 Sixth Avenue
16 Suite 425, Seattle, Washington.

17 The court reporter is Wade Johnson for SRS |
18 Premier Realtime Reporting and Legal Video.

19 Will counsel and all present please note their
20 appearances and affiliations for the record?

21 MR. MANVILLE: Yes. Duncan Manville, Savitt
22 Bruce & Willey, representing the plaintiff and the
23 counterclaim defendant in this case, BOFI Federal Bank.

24 MS. FOX: Susan Fox, with Ryan, Swanson &
25 Cleveland, representing the defendant.

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1 MONICA L. RAY, deponent herein, having been
2 first duly sworn on oath, was
3 examined and testified as
4 follows:
5

6 E X A M I N A T I O N

7 BY MR. MANVILLE:

8 Q. Good morning.

9 A. Good morning.

10 Q. So I know that the videographer just identified you
11 for the record, but could you also state your name for the
12 record, please.

13 A. Monica Ray.

14 Q. And are you the person that Advance Funding, LLC
15 has designated to testify on its behalf today?

16 A. Yes.

17 Q. Have you ever been deposed before?

18 A. I have not.

19 Q. Let me go back over some ground rules for you. A
20 deposition is an opportunity for me to ask you questions and
21 for you to answer them. And do you understand that you will
22 be testifying today under oath, just as you would be
23 testifying in court?

24 A. I do.

25 Q. You'll need to answer audibly and verbally because

Page 7

1 otherwise the court reporter is going to have some trouble
2 taking down what you're saying.

3 A. I understand.

4 Q. A deposition is a little bit like a conversation,
5 but it's not in some respects. And, in one respect, it's
6 important that we not talk over each other. I have a
7 tendency to do that; I'm from the East Coast. You may do the
8 same thing. I'll do my best not to interrupt you, and, if we
9 can avoid doing that, it will make for a much cleaner record.

10 If you don't understand a question, please ask me
11 to clarify it, otherwise I'll assume you understand it; is
12 that fair?

13 A. Okay.

14 Q. Is Ms. Fox here representing you today?

15 A. Ms. Fox is representing Advance Funding.

16 Q. She may be making objections for the record today,
17 and, for the most part, notwithstanding her objections,
18 you'll need to answer the questions anyway. If there is a
19 question that I ask that touches on an issue of, for example,
20 the attorney-client privilege, she may ask you or instruct
21 you not to answer the question, but, for the most part, if
22 she makes an objection, it's just for the record.

23 Let me know if you need a break; we'll take one
24 whenever you need one.

25 Is there any reason why you cannot give accurate

1 and truthful testimony today?

2 A. No, sir.

3 Q. Let's get just a little bit of background on you,
4 very, very briefly. Tell me how you're currently employed.

5 A. I'm currently employed with Northeastern Capital
6 Funding, a New York company.

7 Q. And what's your position with Northeastern Capital
8 Funding?

9 A. Director of legal.

10 Q. What are your job responsibilities in that
11 position?

12 A. Basically, to oversee the preparation through
13 closing of all transactions.

14 Q. Do you have a law degree?

15 A. I did not sit for the bar, but I did pursue a juris
16 doctorate at the University of Miami. I did not complete.

17 Q. How much course work did you do toward that degree?

18 A. I had to leave due to complications with being a
19 single mother in my first semester, so very little.

20 Q. So you have a college degree then?

21 A. I do.

22 Q. Where did you get your college degree?

23 A. I have several. I have an Associate's in Criminal
24 Justice from Montgomery College, I have a paralegal
25 certificate from FAU, and a four-year from University of

1 Maryland.

2 Q. Did you grow up in Maryland?

3 A. I did.

4 Q. I went to Bethesda Chevy Chase High School.

5 A. I was on the police force in Bethesda.

6 Q. Oh, were you really?

7 MS. FOX: Do you remember him from there?

8 THE WITNESS: No.

9 MR. MANVILLE: You would have.

10 Q. So how long have you been the director of legal
11 with Northwestern Capital Funding?

12 A. Northeastern Capital.

13 Q. Northeastern.

14 A. May of 2006.

15 Q. What did you do before that?

16 A. I worked for Encore Funding.

17 Q. Encore Funding?

18 A. Correct. It's another factoring company in our
19 industry.

20 Q. Where were they located?

21 A. West Palm Beach, Florida.

22 Q. How long did you work for them?

23 A. Three years.

24 Q. What was your position there?

25 A. Senior paralegal.

1 Q. When you made the move to Northeastern Capital
2 Funding, did you start there as director of legal?

3 A. Yes.

4 Q. So that's the same position you've held the whole
5 time?

6 A. Correct.

7 Q. Have your job responsibilities there changed at
8 all?

9 A. Not -- no.

10 Q. What did you do before your three years at Encore
11 Funding?

12 A. I worked for Singer Asset Funding.

13 Q. Senior Asset Funding?

14 A. Singer.

15 Q. Singer, like S-i-n-g-e-r?

16 A. Correct.

17 Q. Is that another factoring company?

18 A. It is.

19 Q. Were you a paralegal there?

20 A. Yes.

21 Q. How long did you work there?

22 A. From October of '98 until December 31st of 2000.

23 Q. So there seems to be a three-year gap. Did you
24 take some time off between --

25 A. Yes.

Page 11

1 Q. What did you doing? Were you a mom during that
2 period?

3 A. I was a mom during that period.

4 Q. When did you get your degree from the University of
5 Maryland?

6 A. '85.

7 Q. And what is your degree, your four-year degree?

8 A. Economics.

9 Q. What did you do when you got out of college?

10 A. As far as?

11 Q. Employment.

12 A. I worked in legal offices, basically, from the age
13 of 16.

14 Q. And in what capacity?

15 A. Paralegal.

16 Q. Paralegal.

17 A. Legal assistant, started as a legal assistant until
18 I received my certificate.

19 Q. When did you receive your paralegal certificate?

20 A. I received FAU in '96.

21 Q. When did you make the move into the factoring
22 industry; was that when you started with Singer in 1998?

23 A. Correct.

24 Q. What prompted you to make that move?

25 A. A friend that I bowled with suggested that I might

1 like corporate, as opposed to personal injury.

2 Q. What's the relationship between Northeastern
3 Capital Funding and Advance Funding?

4 A. They are owned by brothers.

5 Q. So who owns Northeastern Capital Funding?

6 A. John Cevallos.

7 Q. And what type of entity is it?

8 A. A factor -- oh, LLC.

9 Q. Is he the sole member of the LLC?

10 A. I believe so.

11 Q. Who owns Advance Funding?

12 A. Dan Cevallos.

13 Q. Are there any other -- he's a member of the LLC?

14 A. Yes.

15 Q. Is he the sole member?

16 A. I believe so.

17 Q. How many employees does Advance Funding have?

18 A. To my best knowledge, I would say 12.

19 Q. And so, getting back to my earlier question, I

20 understand that Northeastern Capital Funding is an LLC that's

21 owned by John Cevallos and Advance Funding is an LLC that's

22 owned by Dan Cevallos. Are you an employee of Advance

23 Funding?

24 A. I am not.

25 Q. So what's your connection with Advance Funding

1 then?

2 A. Basically, Northeastern secures funding and has in
3 an experience fostered several different funding sources that
4 we have sole access to, so Advance Funding has not, and,
5 therefore, we secure funding for Advance Funding.

6 Q. So tell me how that process works. How does
7 Northeastern secure funding for Advance Funding, just
8 generally?

9 A. Northeastern secures funding for lots of different
10 companies, Advance happens to be one of them. Basically,
11 they will contract with a winner or a structured settlement
12 annuitant.

13 Q. They being Northeastern?

14 A. They or any -- no, Advance Funding or any other
15 brokering company.

16 Q. Okay.

17 A. Will actually do the contracting with the
18 individual. We will secure an assignee. Sometimes
19 Northeastern handles the filing of the petition; sometimes
20 the broker will handle it. Just each individual transaction
21 is different.

22 Q. How is Northeastern a broker?

23 A. Northeastern -- I wouldn't consider us a broker so
24 much so that we secure funding for lots of different
25 brokering companies. So they broker to us, and then we find

1 assignees for them.

2 Q. So how is a company like Northeastern different, in
3 terms of what it does, than a company like Settlement
4 Collection Service?

5 A. Settlement Collection Services, I believe, is a
6 wealth management company. They have individual clients;
7 Northeastern does not.

8 Q. But, functionally, I take it that the two companies
9 do kind of the same thing, they serve as an intermediary
10 between a factoring company, like Advance Funding, and an
11 investor?

12 A. I, unfortunately, can't speak to what SCS or any
13 other company might do in their normal practice. I do know
14 that they do have clients that purchase structured
15 settlements and lottery transactions from us or through us.

16 Q. Okay. But Northeastern -- was what I just said,
17 was that an accurate summary of what Northeastern does, it
18 essentially acts as an intermediary between a factoring
19 company like Advance Funding and a source of funding for a
20 transaction?

21 A. That is one such thing that it does, yes.

22 Q. And that source of funding could potentially be a
23 broker; it could be an investment company with individual
24 investors; it could potentially be an investor, correct?

25 A. It could be.

1 Q. Was Northeastern involved in the Sheena Venzant
2 transaction?

3 A. Northeastern secured the funding for that
4 transaction.

5 Q. Is there a contractual relationship between Advance
6 Funding and Northeastern?

7 A. There is not.

8 Q. So there's no global contractual relationship
9 governing the business that the parties do together?

10 A. No, sir.

11 Q. Is there a contractual relationship that Advance
12 Funding and Northeastern enter into with regard to specific
13 transaction, like the Venzant transaction?

14 A. No, sir.

15 Q. When Northeastern assists Advance Funding in
16 obtaining funding for a lottery transaction, does
17 Northeastern earn a profit on that deal?

18 A. In some instances, yes.

19 Q. And how is that determined? What percentage --
20 what kind of a profit does Northeastern earn on these deals?

21 MS. FOX: Now, I'm going to object to that
22 question. It's far outside the scope of this deposition.

23 It's about a company that's not even an entity and
24 proprietary. This is a 30(b)(6) dep. I've given you quite a
25 bit of latitude, but I think we need to get to the topics.

1 Q. You can answer the question.

2 A. The percentages vary. I can't give you a
3 certain -- there is no set.

4 Q. I'm not asking about a specific percentage. I just
5 mean, when Northeastern assists Advance Funding in placing a
6 deal, it will earn some percentage of -- some profit on that
7 transaction, correct?

8 A. No, not necessarily.

9 Q. Sometimes, but not always?

10 A. Sometimes, but not always.

11 Q. Did Northeastern earn a profit on the Venzant
12 transaction?

13 A. It did not.

14 Q. And so, when you were communicating with Scott
15 Miller at SCS about the Venzant transaction, were you doing
16 so in your capacity as a representative of Northeastern or a
17 representative of Advance Funding?

18 A. I don't believe I had any capacity in mind. It was
19 a transaction that was flowing through me as far as securing
20 the funder. So I was acting in that capacity.

21 Q. How much insight do you have into the operations of
22 Advance Funding?

23 A. Generally or with --

24 Q. Generally.

25 A. Generally, I would say I have a modicum of insight.

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1 Q. So how do you know that Advance Funding has 12
2 employees?

3 A. I've been to their holiday party.

4 Q. Counted heads?

5 A. When you asked, I literally counted in my head.

6 Q. Do you have access to Advance Funding's books and
7 records?

8 A. Books and records in what regard?

9 Q. Financial documents, profit and loss statements,
10 tax filings, anything like that?

11 A. No, sir.

12 Q. Do you have any personal knowledge regarding
13 what -- the profit that Advance Funding might earn on a
14 particular lottery transaction?

15 A. In as much as I secure the funding for that
16 transaction, I would absolutely know the profit for each of
17 those transactions.

18 Q. The profit that Advance Funding would earn on the
19 transaction?

20 A. Correct.

21 Q. You told me earlier that you were here to testify
22 as an authorized representative of Advance Funding; have you
23 reviewed the deposition notice pertaining to this deposition?

24 A. I have.

25 MR. MANVILLE: Let's make this the first

1 exhibit.

2 (Exhibit 1 marked for
3 identification.)

4 Q. Handing you Exhibit 1, is this a copy of the
5 deposition notice that you reviewed for today's deposition?

6 A. Yes.

7 MR. MANVILLE: For the record here, we noticed
8 after this went out that the notice was dated September 15th,
9 although it should have been dated September 18th, and the
10 certificate of service reads September 22nd, inexplicably,
11 although it should have read September 18th.

12 Q. Did you review this deposition notice before today?

13 A. I did.

14 Q. Did you review all the topics stated in the notice?

15 A. I did.

16 Q. And are you prepared to testify today regarding all
17 of the topics stated in this deposition notice?

18 A. I am.

19 Q. What did you do to prepare for your deposition
20 today?

21 A. I reviewed the file. I reviewed pleadings. I
22 discussed with sales; the president; the accountant;
23 research; the legal department. I reviewed UCC searches;
24 lien searches; court searches, in two different
25 jurisdictions. I reviewed the affidavit of Sheena Venzant,

1 and I reviewed the responses to the Complaint as well as the
2 interrogatory and request for production.

3 Q. When you say you reviewed the file, what file are
4 you referring to?

5 A. The file that is held for the purposes of securing
6 the funding. We have a copy of all the documents that would
7 go to the funder in the closing binder. Would you like me to
8 elaborate?

9 Q. Yes, I would.

10 A. That would be the contract between Advance Funding
11 and Sheena Venzant, with Exhibits A through C, which are the
12 disclosure statement; the address verification; the marital
13 status and consent page. It includes her ID and Social
14 Security card; a W-9; evidence of winning, which in
15 Washington consists of an award letter; UCC searches; lien
16 searches; the petition, with its attachments; the order; the
17 acknowledgment letter; requests for information of the
18 lottery. That's it.

19 Q. And all of these documents would have gone to the
20 funder in connection with this transaction?

21 A. All but the request for information to the lottery.

22 Q. And are these documents, are they held by Advance
23 Funding, or are they held by Northeastern?

24 A. They would be held by both.

25 Q. Northeastern has a copy, and Advance Funding has a

1 copy?

2 A. Correct.

3 Q. Were all of these documents produced in discovery
4 in this case; do you know?

5 A. I believe so, yes.

6 Q. Were all of these documents provided to SCS back in
7 2013?

8 A. Yes, except for the request for information to the
9 lottery.

10 Q. Are those dated at a later date?

11 A. No, they're just not required in the closing
12 binder.

13 Q. Do you know exactly when in 2013 this information
14 was provided to SCS?

15 A. Exactly, no.

16 Q. Is there a cover letter transmitting these
17 documents to SCS that's in the file?

18 A. There's an e-mail.

19 Q. An e-mail. Do you know the date of that e-mail?

20 A. I do not recall the date.

21 Q. Who sent it?

22 A. It would have been sent by me.

23 Q. You sent it?

24 A. Yes.

25 Q. So there's, somewhere in the file or in your

1 records, there's an e-mail transmitting all of these
2 documents?

3 A. Correct.

4 Q. Who did you send them to?

5 A. That would have been sent to Amy Schwartz, who is
6 counsel for SCS, copying all of the Millers and Connie
7 Younan.

8 Q. And who is she?

9 A. She is, in some respects, their office manager, of
10 sorts. I don't know exactly what her position is.

11 Q. And apologies if I already asked you this, but the
12 date of that -- do you know the date of that e-mail?

13 A. I would imagine it was sometime in July. I was, in
14 July, forming up things, securing documents for that closing
15 binder.

16 Q. When you say you imagine it was sometime in July,
17 why do you say you imagine? Are you assuming?

18 A. Because I recall -- I'm not assuming. I
19 specifically recall an e-mail in early July, first of July,
20 where I was looking for a certain document that was required
21 for closing binder. So I would assume it was June or July.

22 Q. Would that be your normal practice, to prepare a
23 closing binder and send it to the broker or the funder within
24 a month or two after the court order is obtained?

25 A. It's actually after the acknowledgment is obtained.

1 That is the last thing, generally.

2 Q. All right. And tell me what the acknowledgment
3 letter is.

4 A. That is where the lottery has been served with a
5 copy. I believe, in Washington, it's required that it be
6 certified, but I'm not 100 percent sure. And they
7 acknowledge receipt of the order and that they will change
8 his records accordingly to pay the payee listed in the
9 approved court order.

10 Q. And your normal practice is that, after you receive
11 that acknowledgment letter, you prepare a closing binder, and
12 you send it to the broker or the funder?

13 A. Correct.

14 Q. So your testimony is that, in this matter, in June
15 or July of 2013, you sent copies of the UCC searches to Amy
16 Schwartz and also Scott and Richard Miller?

17 A. They were lien and judgment searches, but they do
18 include UCC searches, yes.

19 Q. Did those searches show the UCC filings that BOFI
20 had filed in 2012?

21 A. They did.

22 Q. You said you talked to sales; I assume that means
23 sales at Advance Funding?

24 A. Correct.

25 Q. Who did you talk to?

1 A. Barbara Guerra.

2 Q. And who is she?

3 A. A salesperson for Advance Funding.

4 Q. What did you talk about with her?

5 A. I asked her about her initial contact with Sheena

6 Venzant, conversations she may or may not have had with --

7 I'm not even going to try to pronounce the name -- Onwubere.

8 Q. Onwubere, yeah.

9 A. I also asked her about the insurance documents.

10 Q. What did she tell you about her initial contact

11 with Ms. Venzant?

12 A. Initially, she told me that she had spoken with her

13 when she first got the information regarding the win, but had

14 very little to no contact between then and when Ms. Venzant

15 reached out to her in 2013.

16 Q. When you say that she had -- did Ms. Guerra -- is

17 it Guerra or Guerra?

18 A. Guerra.

19 Q. Guerra. Did she contact Ms. Venzant after she won

20 the lottery, shortly after she won the lottery?

21 A. Yes.

22 Q. What did they discuss at that time?

23 A. She didn't have a recollection of the actual nature

24 of the conversation. Ms. Guerra is a very social person, so

25 her conversations tend to include family matters, in both

1 Ms. Guerra's family and the winner's family. But I'm certain
2 it was probably geared towards a contract.

3 Q. But, at that time, Advance Funding obviously did
4 not enter into an agreement with Ms. Venzant?

5 A. No.

6 Q. Did she say why?

7 A. No.

8 Q. Did you ask her why?

9 A. No.

10 Q. You said that Ms. Guerra had little to no contact
11 between then and when Ms. Venzant reached out to her in 2013;
12 is that little contact or no contact?

13 A. When I asked her specifically, she said she
14 couldn't recall if there was possibly another e-mail
15 transaction between the two, so that's why I said little to
16 no.

17 Q. Did Advance Funding search its records to attempt
18 to locate such an e-mail correspondence between Ms. Guerra
19 and Ms. Venzant?

20 A. It did.

21 Q. And didn't find anything?

22 A. I don't believe Ms. Guerra was employed by Advance
23 Funding at that time.

24 Q. Is she currently employed by Advance Funding?

25 A. Yes.

1 Q. Did she leave the company for a while?

2 A. Not to my knowledge, no.

3 Q. So she was employed by Advance Funding when
4 Ms. Venzant won the lottery?

5 A. I don't believe so, sir.

6 Q. So, when she spoke with Ms. Venzant shortly after
7 Ms. Venzant won the lottery, was she an Advance Funding
8 employee?

9 A. No, sir.

10 Q. She was working for another company?

11 A. Yes, sir.

12 Q. And she was contacting Ms. Venzant on behalf of
13 that other company?

14 A. I would assume so, yes.

15 Q. When did she start working for Advance Funding?

16 A. I don't know the exact date that she started.

17 Q. So it's possible -- what you're telling me is that
18 it's possible she had some correspondence with Ms. Venzant
19 before she came to Advance Funding?

20 A. Yes, sir.

21 Q. And is it your testimony that Ms. Venzant reached
22 out to Ms. Guerra in 2013 and not the other way around?

23 A. It's my testimony, from review of the affidavit of
24 Sheena Venzant, that Sheena Venzant reached out to Advance
25 Funding, specifically to Barbara Guerra.

1 Q. What did Ms. Guerra tell you about that?

2 A. Ms. Guerra was not 100 percent certain who made
3 initial contact. So she indicated that she did return a call
4 from Ms. Venzant.

5 Q. But she didn't remember who initiated the contact?

6 A. Correct.

7 Q. Are you aware that Advance Funding stated in its
8 answers to interrogatories that Advance Funding initiated
9 that contact?

10 A. I am.

11 Q. Do you believe that's incorrect, or do you not know
12 one way or the other?

13 A. I believe that Advance may have done that, and I
14 also understand that Sheena Venzant believes that she made
15 the initial contact. We are referring to something that
16 happened years ago, so --

17 Q. What did Ms. Guerra tell you about her
18 communications with Mr. Onwubere?

19 A. Ms. Guerra indicated that she spoke with that
20 gentleman to confirm that Ms. Sheena Venzant cancelled her
21 contract.

22 Q. Do you know the specifics of that conversation that
23 Ms. Guerra had with Mr. Onwubere?

24 A. I believe those were the specifics.

25 Q. And do you know what basis Mr. Onwubere had for

1 stating that Ms. Venzant had cancelled the contract?

2 A. I can't speculate as to what basis he had for
3 stating that she had cancelled her contract.

4 Q. Do you know if Ms. Guerra asked him how he knew
5 that she had cancelled the contract?

6 A. I believe Ms. Guerra believed he was a BOFI
7 employee.

8 Q. Do you know if he was a BOFI employee at that time?

9 A. I have learned now that he was not.

10 Q. You also spoke with Ms. Guerra about insurance
11 documents; what did you discuss with her about insurance
12 documents?

13 A. I wanted to know where the insurance documents
14 initiated, whether that was something that we had secured,
15 being Advance, or whether that was something Ms. Venzant had
16 secured.

17 Q. What did she tell you?

18 A. That the insurance policy was secured by
19 Ms. Venzant and that the documents for change of ownership
20 were secured by Ms. Venzant, as well.

21 Q. Why was Ms. Guerra the person that you talked to
22 about the insurance documents; why would she have had
23 knowledge of that?

24 A. I reviewed e-mails, as I stated before, and one of
25 the e-mails I was asking Ms. Guerra to secure the documents,

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offered for the truth of the matters
asserted

1 signed by Ms. Venzant so that we could process the change of
2 ownership to the assignee.

3 Q. Why would Ms. Guerra have been the one to secure
4 those documents?

5 A. Because she is the salesperson in the matter.

6 Q. Did you talk to anyone else in the sales
7 department?

8 A. I talked to Frank Paolercio.

9 Q. Who is that?

10 A. Head of sales.

11 Q. What did you talk to him about?

12 A. Asked him about his knowledge of the transaction,
13 his transactional event knowledge, and if he had any contact
14 with Sheena Venzant.

15 Q. What did he tell you?

16 A. He told me several things. He basically told me
17 that Barbara was the primary contact with Sheena Venzant,
18 that he was aware of all of her conversations, but that he
19 had had no contact with her.

20 Q. With Ms. Venzant?

21 A. Correct.

22 Q. And how was he aware of all of the conversations
23 that took place with Ms. Venzant?

24 A. In his position as head of sales.

25 Q. How do the salespeople report to him?

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1 A. I'm not in their office. I do not know the answer
2 to that. I would assume that they have conferences, but I
3 can't speculate.

4 Q. Do they report to him by e-mail?

5 A. I don't believe the sales are very big on e-mail.

6 Q. What's your basis for that belief?

7 A. My communications with sales are very limited
8 e-mail. They're phone people.

9 Q. Are salespeople required to submit written reports
10 of their activities?

11 A. No.

12 Q. Did you speak to anybody else in the sales
13 department to prepare for your deposition today?

14 A. In sales, no.

15 Q. You said you spoke to the president; I take it you
16 mean Mr. Cevallos?

17 A. Correct.

18 Q. Dan Cevallos?

19 A. Correct.

20 Q. What did you talk to him about?

21 A. I asked him about his involvement in the matter, if
22 any, whether he had had any conversations with Eshel or
23 Mr. Garrabrants or Mr. Heffner.

24 Q. Anything else?

25 A. That's it.

1 Q. What did Mr. Cevallos tell you about his
2 involvement in the Venzant matter?

3 A. He had received one call from, I believe, David
4 Bavli, but was never made -- they never made contact after
5 that. They played, I guess, phone tag. And that his
6 conversations with Eshel were post-lawsuit.

7 Q. What did Mr. Cevallos and Mr. Bavli discuss?

8 A. As I stated, they played phone tag, and there was
9 no discussion.

10 Q. They didn't actually speak on the phone?

11 A. They did not.

12 Q. That's Mr. Cevallos's position?

13 A. That's what he told me.

14 Q. What conversations did Mr. Cevallos have with
15 Mr. Bar-Adon after the filing of the lawsuit that you talked
16 about with him?

17 A. Basically, settlement negotiations.

18 Q. Anything else?

19 A. Just actions in the lawsuit, things that were going
20 to happen. I know that he warned him more than once about
21 creating bad law.

22 Q. You believe that what the court entered is bad law?

23 A. I do, sir.

24 Q. Why?

25 A. It's not good for any type of law to be created in

1 our industry. It's difficult enough for these transactions.

2 That one is particularly harmful.

3 Q. Why do you think it's harmful?

4 A. It induces poaching.

5 Q. Does Mr. Cevallos share your belief; did he express
6 that to you?

7 A. I don't believe he has one care either way. It
8 won't affect anything that he does or how he does it, is how
9 he responded to me.

10 Q. Did Mr. Cevallos state to you that he had any other
11 involvement in the Venzant matter other than trading phone
12 calls with Mr. Bavli?

13 A. Are you asking with respect to BOFI?

14 Q. Let's say -- no, I'm not actually. Let me rephrase
15 that question. Did Mr. Cevallos tell you that he had any
16 other involvement in the Venzant matter, other than his phone
17 calls with Mr. Bavli before BOFI filed this lawsuit?

18 A. He did not indicate any type of activity.

19 Q. Did you ask him whether he had had any other
20 involvement in the Venzant matter?

21 A. I did not ask him if he had any other. I had asked
22 him initially, and I received his response, which --

23 Q. So you asked him what was your involvement in the
24 Venzant matter. He said, David Bavli and I traded phone
25 calls, and I had some settlement discussions with Eshel?

1 A. That was his response with respect to his contact
2 with BOFI. He obviously was aware of the situation from
3 Barbara Guerra and his sales manager.

4 Q. When you say he was aware of the situation, what do
5 you mean by that?

6 A. He plays an integral part in contract negotiation.

7 Q. What role does he play?

8 A. He approves or disapproves of whatever contract
9 term were negotiated by sales and the winner or the
10 annuitant, in this case, a winner.

11 Q. Does he do that in every instance?

12 A. Yes. He also has to approve or disapprove of
13 advances requested, and, from what I understand, those were
14 requested frequently.

15 Q. I'm sorry, I missed that. He also has to approve
16 or disapprove of what?

17 A. Advances.

18 Q. Advances, okay. Does he also approve or disapprove
19 of the terms of deals that Advance Funding offers to brokers
20 or investors?

21 A. Absolutely.

22 Q. And, again, in every instance?

23 A. In every instance.

24 Q. And so I gather from your testimony that, in the
25 Venzant matter, he would have approved the terms of the

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1 agreement that were offered to Ms. Venzant and then approve
2 the terms of the deal that were offered to SCS, correct?

3 A. Yes.

4 Q. Would he have had any other involvement in the
5 Venzant matter?

6 A. If there were an issue or something that required
7 his involvement, he would definitely have been the person.
8 He did not recall any special issues.

9 Q. You said you spoke with the accountant for Advance
10 Funding?

11 A. I did.

12 Q. Who is that?

13 A. Julie Casal.

14 Q. Why did you speak with her?

15 A. I wanted to confirm advance information, funding
16 information, and anything that she might have known about the
17 Sheena Venzant matter.

18 Q. What did you learn from her?

19 A. She divulged the dates of advances, the date of
20 funding, and that she had no personal or direct contact with
21 Sheena Venzant.

22 Q. Were there advances that Advance Funding gave to
23 Ms. Venzant?

24 A. Yes.

25 Q. How many?

1 A. Several. Unfortunately, with all the details I had
2 to remember, that's just not something that I can remember.

3 Q. More than one?

4 A. Absolutely.

5 Q. Do you know the amount of the advances?

6 A. They varied.

7 Q. What was the total; do you know?

8 A. I do not recall.

9 Q. Can you give me an approximate number?

10 A. I cannot. Those advances were reimbursed at
11 closing.

12 Q. Do you know if Ms. Venzant had any communications
13 with Advance Funding regarding those advances?

14 A. She had several. Her contact would have been
15 Barbara Guerra.

16 Q. Were those communications by phone or by e-mail or
17 by text or by some combination?

18 A. Combination, majority phone.

19 Q. Were there e-mails between Ms. Venzant and
20 Ms. Guerra related to the transaction for advances that
21 Ms. Venzant received?

22 A. There were e-mails between Ms. Guerra and
23 Ms. Venzant relating to the transactions. I believe there
24 was also at least one with regard to an advance.

25 Q. Were those e-mail messages produced in this case?

1 A. Yes, sir.

2 Q. So you saw them when you went through the documents
3 that Advance Funding had produced in discovery?

4 A. Yes, sir.

5 Q. Do you remember the dates of the e-mails?

6 A. I do not.

7 Q. They would have been, presumably, spring 2013?

8 A. They would have been, presumably, throughout the
9 entire transaction. Ms. Venzant, as most lottery winners,
10 request advances frequently.

11 Q. Does the sales team at Advanced Funding keep a
12 running log of communications with lottery winners?

13 A. No, sir.

14 Q. You said that one of the e-mail messages exchanged
15 between Ms. Guerra and Ms. Venzant related to advances,
16 correct?

17 A. At least one.

18 Q. At least one, okay. What did the other e-mail
19 messages relate to?

20 A. Family matters. I know I reviewed the discussion
21 about the cancelation letter.

22 Q. What was the substance of that discussion?

23 A. We were attempting to secure it for the closing
24 binder. So there were some discussions back and forth about
25 getting a copy of it, what the substance of it was. I know

1 she sent us a copy from work, which was an unsigned copy. So
2 I said I needed the actual copy that was sent. And I was
3 reading that it was at home and would be sent to us when
4 Sheena arrived at home.

5 Q. And were these communications then in June or July,
6 when you were putting the closing binder together?

7 A. They would have been during that time frame, yes.

8 Q. Had you seen the letter prior to that time frame?

9 A. We saw prior an unsigned copy of that letter, but
10 our due diligence requires that we have a signed copy.

11 Q. Did Advance Funding produce a signed copy of the
12 letter in this case?

13 A. Yes.

14 Q. How about an unsigned copy of the letter?

15 A. I do not know. I don't recall if I saw that or
16 not.

17 Q. And these communications with Ms. Venzant about
18 this letter, these were all by e-mail?

19 A. I don't believe all of them were by e-mail. I
20 would imagine some were definitely by phone, but I did recall
21 reading one by e-mail.

22 Q. And these were communications between Ms. Venzant
23 and Ms. Guerra?

24 A. Correct.

25 Q. Did Ms. Venzant have any written communications

1 with anybody else at Advance Funding?

2 A. Not to my knowledge.

3 Q. You mentioned that at least one of these

4 communications referenced -- and we were just talking about

5 this, to some extent -- at least one of the communications

6 referenced Ms. Venzant's assertion that she had cancelled her

7 contract with BOFI, correct?

8 A. Correct.

9 Q. When did she notify or when did she advise Advance
10 Funding that she had canceled her contract with BOFI?

11 A. Early on, she advised us that she had cancelled her
12 contract with BOFI.

13 Q. And did she advise you that she had cancelled her
14 contract -- did she advise you of that in a written
15 communication, like an e-mail or a text message?

16 A. I believe that conversation was by phone to
17 Ms. Guerra.

18 Q. And do you know when that conversation took place?

19 A. That was during the initial contract signing
20 period, which was May. So I would assume it would have been
21 in April or May, perhaps June, but I doubt it was that late.

22 Q. But you don't know exactly when it took place?

23 A. I don't recall the exact date.

24 Q. You said you spoke with legal in preparing for this
25 deposition?

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for the truth of the matters asserted

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1 A. Correct.

2 Q. What do you mean by that? I want to be careful
3 here because I don't want to ask you about any privilege
4 communications. What's legal? Does Advance Funding have an
5 in-house legal department?

6 A. They have legal employees that work in the state of
7 Florida. They're separated from sales.

8 Q. So employees of Advance Funding?

9 A. Correct.

10 Q. This is not outside counsel?

11 A. Correct.

12 Q. Are these lawyers?

13 A. No.

14 Q. Paralegals?

15 A. Employees.

16 Q. Okay. So what makes them a legal department?

17 A. They handle contract preparation; due diligence.

18 Q. Who did you talk to there?

19 A. Elyse Edwards, spelled with a "Y."

20 Q. E-l-y-s-e?

21 A. Correct.

22 Q. Thank you. Did you talk to anybody else in the
23 legal department about this case?

24 A. No, sir. That file was prepared by Elyse Edwards.

25 Q. What's the file you're referring to?

1 A. The file I mentioned earlier.

2 Q. The closing binder?

3 A. Correct. And I forgot to mention the credit report
4 when I was listing documents that are sent.

5 Q. What did you speak with Ms. Edwards about?

6 A. I asked her, when she ran searches in her due
7 diligence, did she see any issues and whether she had any
8 contact with Sheena Venzant.

9 Q. Did she say that she had seen any issues?

10 A. None.

11 Q. Did she have any contact with Ms. Venzant?

12 A. No.

13 Q. Was that all you talked about with her?

14 A. Yes.

15 Q. I think you mentioned that you had reviewed --
16 correct me if I'm getting this wrong -- but court searches in
17 two jurisdictions?

18 A. Correct.

19 Q. What sort of a court search are you talking about?

20 A. When it is discovered that someone may or may have
21 not done a deal with a prior factoring company, we perform a
22 search to see if that deal ever went to fruition.

23 Q. Why did you search in two jurisdictions?

24 A. Because the law requires that you either file where
25 the lottery is located or where the winner resides.

1 Q. What two courts did you search then?

2 A. The residence county and the county that the
3 lottery is located in.

4 Q. So what due diligence did Advance Funding do before
5 it entered into the agreement with Ms. Venzant?

6 A. Before? Generally, they'll do UCC searches.

7 Q. In this case --

8 A. Yes.

9 Q. -- Advance Funding did UCC searches?

10 A. They did.

11 Q. What else?

12 A. You don't have the authority to ask for much, so,
13 unfortunately, that's about the extent of it.

14 Q. Advance Funding didn't contact BOFI after
15 discovering that BOFI had previously entered into an
16 agreement with Ms. Venzant, correct?

17 A. Correct, and they would not.

18 Q. Why not?

19 A. That would induce poaching.

20 Q. In what way?

21 A. BOFI would be alerted that we were doing a
22 transaction with Ms. Venzant and would attempt to secure the
23 deal themselves.

24 Q. And you would consider that to be poaching?

25 A. Yes, indeed, sir.

1 Q. Why?

2 A. Because, without that knowledge, they would have
3 never known that we were doing a transaction or that
4 Ms. Venzant was interested in doing a transaction. It would
5 be an unfair advantage.

6 Q. For BOFI to know that you were talking to her?

7 A. For BOFI or any of the factoring companies to know,
8 yes.

9 Q. And that's true even though BOFI had previously
10 entered into a transaction with her?

11 A. That would be true with any factoring company at
12 any time.

13 Q. What due diligence did Advance Funding do after it
14 entered into an assignment agreement with Ms. Venzant?

15 A. In addition to securing the documents for the
16 closing binder and reviewing each of those items, it does its
17 own court searches; lien and judgment, which includes UCC
18 searches; if available, family probate court searches;
19 searches at the county and the district levels; bankruptcy
20 searches.

21 Q. Did Advance Funding do all those searches in this
22 case?

23 A. They hired someone to do those searches.

24 Q. And are the results of those searches in Advance
25 Funding's records?

1 A. Yes.

2 Q. Did you review them to prepare for your deposition
3 today?

4 A. I did.

5 Q. Were they produced in discovery?

6 A. I believe they were.

7 Q. Did Advance Funding do any other due diligence
8 after it entered into the assignment agreement with
9 Ms. Venzant?

10 A. Based on conversations with Sheena, it was
11 obviously revealed that she had done a prior transaction with
12 BOFI. She claimed that she had cancelled it. Of course, we
13 don't just rely on representations made by winners, so they
14 requested a copy of the cancelation letter. They performed
15 the court searches that I referenced earlier.

16 Q. And why don't you just rely on representations of
17 winners?

18 A. It's not within our due diligence.

19 Q. And why is that?

20 A. Because it could be proven false.

21 Q. Why didn't you contact BOFI here to determine
22 whether Ms. Venzant had cancelled her agreement with BOFI?

23 A. I believe I answered that question.

24 Q. Because that would induce poaching, as you put it?

25 A. Absolutely.

1 Q. Why was it important to confirm that Ms. Venzant
2 had cancelled her agreement with BOFI?

3 A. We do not want to get into a transaction that might
4 lead to litigation, for one.

5 Q. Any other reason?

6 A. If we were to proceed and incur fees and costs
7 related to due diligence filing, securing of an order or not
8 securing of an order, that obviously would be detrimental.
9 It would be a waste of time.

10 Q. Why would you think that entering into an agreement
11 with a lottery winner like Ms. Venzant, who had previously
12 entered into an agreement with another company, would lead to
13 litigation, if she hadn't cancelled the agreement?

14 A. I have been in this business since '98. I am no
15 stranger to litigation. It could happen whether she had
16 entered into a contract or not, but we try to limit our
17 exposure obviously.

18 Q. If Advance Funding were to enter into an agreement
19 with a lottery winner, an assignment agreement with a lottery
20 winner, and were then to be contacted by another factoring
21 company that was in negotiation with the lottery winner
22 concerning their own assignment agreement and Advance Funding
23 hadn't yet obtained a court order, would Advance Funding take
24 the position that the agreement it had entered into was
25 enforceable and seek to obtain court approval of the

1 agreement?

2 MR. MANVILLE: I am going to object. It is
3 well beyond the scope of this 30(b)(6) deposition. This is
4 exactly the problem that we discussed yesterday with the
5 judge, and I think she admonished you that you need to stay
6 within the topics. So point to me, please, where that is in
7 any way related to one of your designated topics.

8 Q. You can answer the question.

9 A. Can you repeat the question.

10 MS. FOX: You're here today to answer
11 questions as a 30(b)(6) designated deposition on specified
12 topics and nothing more.

13 MR. MANVILLE: Yes, and you made exactly that
14 objection to the court yesterday, and she overruled it.

15 MS. FOX: Right, and she mentioned that you
16 needed to stay within the topics.

17 MR. MANVILLE: Which is exactly what I'm
18 doing.

19 MR. FOX: Then point to me the topic.

20 MR. MANVILLE: About half of them, Susan. I
21 am not going to get into a discussion about this. This is
22 plainly relevant, and we already had this discussion with the
23 court yesterday.

24 MS. FOX: It is not relevant to the --

25 MR. MANVILLE: If you have a problem with it,

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1 make a motion for protective order. Call the court right now
2 and bring this up.

3 MS. FOX: I am getting a great record of it.

4 MR. MANVILLE: Can you read the question back,
5 please.

6 (The previous question was
7 read back.)

8 MS. FOX: Same objection.

9 A. Advance Funding would proceed to receive court
10 approval if no prior court approval had been received.

11 Q. So Advance Funding would seek to obtain court
12 approval of its agreement at that point?

13 A. I would -- you're not giving me an instance of why
14 it would not, so, yes, it would.

15 Q. Would Advance Funding take the position that the
16 contract was binding and enforceable, notwithstanding -- even
17 before it obtained court approval of the order?

18 MR. MANVILLE: Same objection; outside the
19 scope.

20 A. Advance Funding is well aware that no contract is
21 enforceable, absent court approval.

22 Q. In any circumstance, in any jurisdiction?

23 A. In any circumstance, in any jurisdiction, for
24 lottery.

25 Q. For lottery.

1 A. Can I clarify?

2 MS. FOX: No.

3 Q. Yeah, go ahead.

4 A. There are some states that do not allow lottery
5 assignments; obviously, those states would not be included.

6 Q. Okay. How much time did you spend preparing for
7 your deposition today?

8 A. Approximately, six hours.

9 Q. Did you meet with Ms. Fox to prepare for your
10 deposition? I'm not asking you what you talked about.

11 A. This morning, we met before we came to the office.

12 Q. When did you fly out?

13 A. Last evening.

14 Q. Let's get back to something we were talking about
15 earlier, and this is how Advance Funding participates in
16 factoring transactions relating to lottery installments. Can
17 you tell me generally sort of how the process works, starting
18 from the very beginning. How does Advance Funding identify a
19 potential lottery winner to work with?

20 A. Advance Funding has a research department. Lottery
21 winnings are public information. Research will attempt to
22 locate based on the lists of lottery winners they receive
23 from each lottery state that is assignable, and those bits of
24 information are given to sales.

25 Q. How many people are in the sales department?

1 A. Seven.

2 Q. And so, at that point, the salespeople will reach
3 out to the lottery winners to inquire about whether they're
4 interested in entering into an assignment agreement?

5 A. Yes.

6 Q. How does Advance Funding determine what terms to
7 offer a particular lottery winner?

8 A. They use the TValue program.

9 Q. Tell me how that works.

10 A. TValue is a calculatory program that allows you to
11 put terms in; determine what rate of interest that would be
12 considered. Each of the salesmen know the parameters of
13 funding. So they know, based on that TValue calculation,
14 what they can offer.

15 Q. So what data would you input into the program at
16 the front end when you're trying to figure out what kind of a
17 deal to propose?

18 A. Sales would enter the payments they would like to
19 buy, the payments that the winner might want to sell.
20 Obviously, each transaction is going to be different.

21 Q. And what other information?

22 A. They would calculate a rate.

23 Q. So, for a particular lottery winner like
24 Ms. Venzant, it might be 20 payments of \$50,000 a year,
25 something like that. So that gets input into the program?

1 A. If that's what she wants to sell, yes.

2 Q. Right. Does Advance Funding -- how does Advance
3 Funding determine what -- let's strike that. When Advance
4 Funding initially contacts a lottery winner, is it sort of an
5 open-ended inquiry, like would you be interested in entering
6 into this transaction, some sort of assignment agreement,
7 and, if so, what would you be interested in assigning, how
8 many payments?

9 A. I would be lying if I could answer that question.
10 Each winner obviously is going to be different. Some people
11 say expletives and hang up on them; some people talk to them.
12 Some of our salespeople are more social in nature, and
13 they'll try to get involved in their family matters, develop
14 a relationship, and then start talking about a contract.
15 Some will start talking about a contract right away. It
16 depends on the nature of the salesperson and, obviously, the
17 lottery winner's nature, as well.

18 Q. So, after some discussion with the lottery winner,
19 the lottery winner and the salesperson presumably reach a
20 point where they're talking about a certain number of
21 payments, a certain amount per payment, something like that?

22 A. Correct.

23 Q. Okay. And then the salesperson will take that
24 information and go back and input that information into the
25 TValue program?

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1 A. Yes.

2 Q. And then how does the program determine a rate?

3 A. It's a calculatory program. I would not be able to
4 tell you how that program was designed, but it obviously acts
5 as sort of a reverse mortgage.

6 Q. Is there any other information that needs to be
7 input into the program to determine what the applicable rate
8 is going to be?

9 A. No. The rate is what they put in with the
10 payments.

11 Q. Okay.

12 A. It's the purchase price that they calculate.

13 Q. This is my question. Okay. So they input the
14 payments, and they input a rate?

15 A. A rate.

16 Q. And then that determines what the purchase price --
17 what is going to be offered to the lottery winner, what
18 amount?

19 A. Within a certain range, but, yes, that gives them a
20 basic idea of what they know they could get out of the
21 transaction.

22 Q. And how does Advance Funding determine what rate to
23 input into the program?

24 A. We have developed and fostered funding
25 relationships over the years. We know which funders will buy

1 which types of deals; which funders like deals that start
2 later; which funders like life contingent; which funders want
3 immediate repayment; which funders like smaller deals; which
4 funders will take crazy deals. There is no one set, but we
5 have a general idea what the market is paying rate-wise, so
6 they know basically what they can get from a transaction.

7 Q. The rate that is offered to a lottery winner is not
8 the same rate that the funder gets, right?

9 A. Correct.

10 Q. But the rate that's offered to the lottery winner
11 is driven by what rate you think the funder is going to be
12 willing to offer?

13 A. Correct.

14 Q. And so that is determined -- so the rate that you
15 offer the lottery winner, the rate that Advance Funding
16 offers the lottery winner, is determined by the type of deal
17 at issue, the amount of the deal, who you think might be out
18 there in the funding community who would be willing to fund
19 that deal, and what you think they would be willing to offer
20 for it?

21 A. I believe they basically have a set range that they
22 work with. That's a sales thing, and that wasn't something
23 that I was prepared to testify about.

24 Q. You testified that there's a range of rates that
25 are used to determine what rate to offer to the lottery

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1 winner. And tell me if I'm misstating your testimony.

2 There's a range that the salespeople will pick from, correct?

3 A. They converse with the sales manager and with Dan,
4 and they develop what it is that they're going to offer to
5 the winner.

6 Q. But you don't know exactly how that process works,
7 how they select a particular rate for a particular
8 transaction?

9 A. Other than they know the market rates that are
10 available out there from our funders. That's the only answer
11 I can give you, sir.

12 Q. And I assume the funders, the different funders,
13 are going to be willing to offer different rates, correct?

14 A. Based on their appetite for transactions, yes.
15 Obviously, a transaction that starts later into the future is
16 going to garner a higher rate because they're going to have
17 to wait longer for their repayment. Something that starts
18 with immediate payback is going to garner a higher purchase
19 price.

20 Q. What determines the profit that Advance Funding
21 will earn on this transaction? Is it, oversimplifying, the
22 difference between the rate that funder is willing to offer
23 and the rate that Advance Funding is offering the lottery
24 winner?

25 MS. FOX: I'm going to object to the question.

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1 It's beyond the scope of the deposition notice to ask about
2 the rate. This witness has not been designated to testify
3 about it. And, to the extent that her testimony is binding
4 on Advance Funding, unless it is part of the deposition
5 notice, then she doesn't have to testify about it.

6 MR. MANVILLE: How about Advance Funding's
7 claim for damages in this matter, including, without
8 limitation, the amount of damages claimed by Advance Funding
9 and the factual basis for such claim? That is based on a
10 spreadsheet that we were provided. And the basis for Advance
11 Funding's claim has everything to do with the rates that
12 Advance Funding --

13 MS. FOX: Then ask her about that, and she can
14 talk about it in connection with this particular transaction.

15 MR. MANVILLE: I will get to that, but this is
16 absolutely intimately related with Advance Funding's damages
17 claim, and there is no way that a court would see it
18 otherwise.

19 A. Advance Funding would make the money on the spread,
20 as you have indicated.

21 Q. And so how does Advance Funding -- for a given
22 transaction, how does Advance Funding determine what the
23 spread is going to be?

24 A. You've already stated that, exactly that. They
25 can't predetermine. It isn't until a contract is reached,

1 terms are agreed to, that we begin to shop that transaction.

2 Q. But what you've told me is that Advance Funding has
3 an idea -- before it offers a rate to a lottery winner, it
4 has an idea of what the funders who are potentially going to
5 be interested in this transaction are going to be willing to
6 offer as a rate, right?

7 A. I believe that that's accurate.

8 Q. Now, it may not know it to the decimal point, but
9 it has a rough idea of what that number is going to be, and,
10 on that basis, it can determine what rate it might be willing
11 to offer a lottery winner, correct?

12 A. That is a correct assumption, yes.

13 Q. All right. So the amount that Advance -- so what
14 would prevent Advance Funding from -- so, again, how does
15 Advance Funding determine the spread between -- in advance of
16 entering into these transactions between what it thinks it's
17 going to be able to obtain from a funder and what it's going
18 to be willing to offer a lottery winner, I mean, that spread
19 could be bigger or smaller in any given case, correct?

20 A. The spread is not predetermined. It's something
21 that's shopped after the transaction is done. So it doesn't
22 know exactly within any degree of certainty what it will get.
23 There are times we've entered into contracts, and we couldn't
24 find any funder, irrespective of the fact that we thought
25 somebody might be interested in it. We have a general

1 knowledge of rates out there, a general knowledge of what
2 certain funders like. And sometimes their portfolios fill up
3 in that respect, and something we thought they would take
4 they won't take. By the same respect, there are some times
5 we think they're really going to love a transaction, and they
6 don't even offer a bid. There is no guarantee. So I don't
7 know how to answer that, other than that.

8 Q. In every instance where there is a similar deal
9 that Advance Funding is contemplating with a lottery winner,
10 similar number of payments, similar amount, would Advance
11 Funding offer those lottery winners exactly the same rate?

12 A. There's no guarantee what one salesperson will
13 propose to a sales manager and Dan for any one particular
14 lottery winner. Each transaction is completely different. I
15 don't believe they look at historical data whatsoever.

16 Q. And so how does a particular salesperson then
17 determine exactly what rate to offer a lottery winner?

18 A. Basically, when they get down to terms, they will
19 discuss that with their sales manager, and they will come to
20 some sort of number based on calculations and what they're, I
21 would assume, profit, could be.

22 Q. But there's no grid, there's no table of rates, if
23 you have a transaction with these parameters, you offer this
24 rate, if you have a transaction with these parameters, you
25 offer this rate, it's a case-by-case basis, lottery winner by

1 lottery winner, correct?

2 A. Correct.

3 Q. And so what are, generally speaking, the components
4 of an offer to a lottery winner? So the primary components
5 are plainly going to be, we'll take "x" number of payments,
6 and we will pay you a lump some of "y" for those payments,
7 and I understand that you need to disclose the rate that
8 you're offering. What other terms of a typical lottery
9 transaction are part of one of these deals?

10 A. Are you asking about the contract, or are you
11 asking about negotiations?

12 Q. Well, negotiations first. When you're in
13 discussions with the lottery winner, what are you talking
14 about with the lottery winner other than those items?

15 A. Everything under the sun.

16 Q. Okay.

17 A. Some -- as I stated, some salespeople are very
18 social in nature, and they know everything about their
19 children, about their life, about their job, about their
20 family's funerals, and such. Some don't know as much. It's
21 an individual basis. We have different personalities in our
22 salespeople.

23 Q. That question was not clear. I don't mean just
24 sort of chitchat. I mean what other deal terms are typically
25 discussed during the negotiation phase?

1 A. Basically, lottery winners are only interested in
2 one thing, what am I giving up, what am I getting.

3 Q. The rest of it is incidental?

4 A. A lot of times, they'll ask for advances, a lot.

5 Q. And under what conditions does Advance Funding
6 agree to advance funds to lottery winners?

7 A. I don't believe there are conditions. I do believe
8 they look at the deal terms, the potential that it will
9 garner "x" amount of profit or profit at all. Obviously, it
10 does not want to extend an advance to a deal that might not
11 ever come to fruition because getting money back from a
12 lottery winner is difficult.

13 Q. So, again, that's case by case?

14 A. Absolutely.

15 Q. Typically, those advances are then paid back when
16 the assignment agreement is executed, right?

17 A. No.

18 Q. No. When it's approved by the court and you get a
19 letter from the lottery?

20 A. At closing.

21 Q. At closing, and the money is paid?

22 A. Correct.

23 Q. Does Advance Funding buy entire periodic
24 installments? So, in this case, I noticed that, I believe,
25 Ms. Venzant was entitled to \$52,000 a year, but, if I

1 remember correctly, Advance Funding purchased a slightly
2 smaller amount.

3 A. Each transaction will be different. It all depends
4 on what the lottery winner is willing to sell and what we're
5 willing to buy.

6 Q. Why would you buy \$50,000 out of a \$52,000
7 installment?

8 A. Generally, because that's what the lottery winner
9 wanted to sell. They wanted to keep 2,000 a year for
10 whatever purpose.

11 Q. Do you negotiate with lottery winners concerning
12 the terms of the deal, of a particular deal?

13 A. I have absolutely no contact with a lottery winner,
14 ever.

15 Q. Right. Not you personally, but does Advance
16 Funding, if you're in talks with a lottery winner and they
17 say I want to sell 20 payments, and Advance Funding comes
18 back and says, all right, we'll buy those payments, here's
19 what we're going to pay you, here's the rate we're offering,
20 is that presented on a take-it-or-leave-it basis, or is there
21 frequently negotiation between Advance Funding and the
22 lottery winner?

23 A. Each transaction is different, but there's
24 frequently negotiation. More than one option is generally
25 presented.

1 Q. More than one option, meaning there's some back and
2 forth?

3 A. Yes.

4 Q. How does Advance Funding typically close its deals
5 with lottery winners? I don't mean at closing, but I mean
6 sort of the handshake deal. Who does that work? Is that
7 Mr. Cevallos?

8 A. I don't understand the question.

9 Q. So Advance Funding is in discussions with a lottery
10 winner concerning a possible transaction -- maybe you've
11 answered this earlier -- but are the salespeople responsible
12 for that? So a salesperson is going to be assigned to a
13 lottery winner and makes the initial contact, does the
14 negotiations, closes the deal, and then is responsible for
15 papering it, as well? Is that the way it works?

16 A. The way it works is sales simply has contact with a
17 winner, and they're designed by state, not necessarily by
18 with respect of winner. So each salesperson has a state. So
19 anyone that has won in that state, it's within their purview,
20 and they make contact or they don't make contact. And then,
21 when the contract terms are reached, it is sent to Elyse, and
22 Elyse will prepare the contract.

23 Q. And the salespeople are responsible for finalizing
24 contract terms, reaching the deal with the lottery winner,
25 and so forth?

1 A. Not for finalizing, but for reaching the deal. And
2 then they'll discuss with their sales manager, and, if the
3 sales manager and Dan approve of that transaction, then a
4 contract will be requested.

5 Q. So, assuming you've gotten to that point, you've
6 entered into an assignment agreement with a lottery winner,
7 you've gotten to closing, what happens next in the process?

8 A. In a lot of states and depending on the funder,
9 that's when lien searches, certified lien searches, are
10 ordered. We garner any documents that haven't been secured
11 thus far that would be required for a closing binder.
12 Depending on the funder, sometimes there's an RPSA; sometimes
13 there's an assignment agreement; sometimes there's nothing.

14 Q. Well, so let me back up a little bit. At what
15 point in this process does the funder come into the picture?

16 A. The funder is not aware of the transaction other
17 than, when a bid is presented and accepted, they will provide
18 what name and address they would like listed in the court
19 order. Otherwise, they don't receive anything further until
20 the closing binder.

21 Q. So at what point in the process does Advance
22 Funding contact potential funders for a lottery transaction?

23 A. Sometimes in advance of a contract, if we're fairly
24 certain that they're going to get it signed, but, more often
25 than not, after the contract is signed.

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1 Q. So you sign -- you execute the assignment agreement
2 with the lottery winner, and, at that point, you reach out to
3 funders?

4 A. As I stated, sometimes it's before.

5 Q. Okay.

6 A. But, more often than not, it is after, yes.

7 Q. Okay. And then so who at Advance Funding is
8 responsible for shopping these deals to brokers and
9 investors? Is that you?

10 A. Advance Funding doesn't have connections with
11 brokers and investors. Northeastern Capital has been around
12 for a very long time and has fostered several relationships
13 with funders; wealth managers; insurance companies. It has
14 quite the resources as far as funders.

15 Q. So here, for example, Advance Funding doesn't have
16 a contractual relationship with the Tovey trust, for example?

17 A. I don't know of anyone that has a contractual
18 relationship with the Tovey trust.

19 Q. And Advance Funding doesn't have a contractual
20 relationship with Settlement Collections Service?

21 A. No, sir.

22 Q. The way it works is Advance Funding works through
23 Northeastern, which then shops the deal to its connections in
24 the funding community?

25 A. Correct.

1 Q. And, again, Advance Funding and Northeastern are
2 independently owned, right?

3 A. Correct.

4 Q. One of them is not a subsidiary of the other or an
5 affiliate of the other?

6 A. No, sir.

7 Q. And I believe you told me there was no contractual
8 relationship between those two companies, correct?

9 A. No, sir.

10 Q. So are you the person at Northeastern then who's in
11 charge of obtaining funding for the lottery transactions that
12 Advance Funding enters into?

13 A. I am the person that shops the bids and reviews and
14 sends closing binders, yes.

15 Q. When you shop a bid, how do you do that?

16 A. E-mail.

17 Q. E-mail. Exclusively e-mail?

18 A. I definitely do not have conversations.

19 Q. It's not by phone?

20 A. No, sir.

21 Q. Not, generally, I assume, snail mail?

22 A. No, sir.

23 Q. E-mail. Text message?

24 A. E-mail.

25 Q. Just e-mail, okay. For a typical lottery

1 transaction, how many potential investors do you reach out
2 to?

3 A. I send it to all of our investors, regardless of
4 whether I think they might be interested, because they're
5 appetite for certain transaction could change, and they might
6 not, obviously, alert me to that change immediately. So I
7 don't want to miss an opportunity, so I send it to the
8 blanket basically.

9 Q. And how many addressees comprise the blanket?

10 A. Currently, seven.

11 Q. Who are they?

12 A. I consider that proprietary information, sir. I'd
13 really rather not answer that question.

14 Q. Okay. We may get back to that. One of them is
15 SCS?

16 A. Correct.

17 Q. Are the others all brokers, like SCS, or are they a
18 mix of brokers and funders?

19 A. They're a mix of brokers, they're a mix of funders,
20 and an insurance company.

21 Q. Is this a relatively static list? In other words,
22 have the people that you send these e-mails to, of the
23 entities that you send these e-mails to, does that list
24 change over time.

25 A. Yes.

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1 Q. How frequently do you add or take people off of
2 your e-mail list?

3 A. As frequently as they become available. I have
4 never taken anyone off, that I know of, except for BOFI.

5 Q. Was BOFI on the list for a while?

6 A. BOFI did do transactions with Advance in the past.
7 They became a competitor, and, obviously, it would not be a
8 good idea to send potential contract information to a
9 competitor.

10 Q. How long has Northeastern been in business?

11 A. Northeastern started in '97, I believe.

12 Q. The same year as Advance Funding?

13 A. No, sir.

14 Q. When did Advance Funding start?

15 A. I believe 2011.

16 Q. I believe Advance Funding website states that it
17 did it's first transaction in 1997?

18 A. I'm unaware of Advance Funding's website. I've
19 never actually reviewed it.

20 Q. Does Northeastern have a website?

21 A. It does.

22 Q. Do you know the URL offhand?

23 A. www.northeasterncapitalfunding.com.

24 Q. Do you know what Mr. Cevallos did before 2011
25 work-wise?

1 A. I do not.

2 Q. When you started working at Northeastern -- I
3 believe in May 2007?

4 A. Correct.

5 Q. -- were you shopping bids the same way you do now,
6 by e-mail?

7 A. I wasn't originally responsible for that. John
8 Cevallos did that.

9 Q. When did you take over that responsibility?

10 A. The exact date, I do not recall.

11 Q. Can you tell me approximately?

12 A. It's only the past -- this would be a total
13 guess -- probably seven years, six years.

14 Q. When you started shopping bids, did you do it by
15 e-mail, sort of the same way you do it now?

16 A. The only way I've ever done it, yes.

17 Q. How many potential investors did you send your
18 e-mails to when you started in this position six or seven
19 years ago?

20 A. You're referring to Northeastern now, not Advance?

21 Q. I'm referring to Northeastern, correct.

22 A. Okay. I didn't realize I would be testifying
23 regarding Northeastern, but I have no problem. Can you
24 repeat the question.

25 Q. When you started in your current position and --

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1 when you took over shopping bids from John Cevallos, how many
2 investors, potential investors, would you send your e-mails
3 to?

4 A. I really do not recall. I don't believe the number
5 was as high as seven, but I don't recall the exact number.

6 Q. Do you know if anyone at Advance Funding or
7 Northeastern is responsible for developing new funding
8 sources?

9 A. The presidents of each of those companies.

10 Q. It's part of their jobs?

11 A. Yes.

12 Q. How does Northeastern go about developing new
13 funding sources?

14 A. I did not converse with John Cevallos about
15 Northeastern's funding acquisitions. I apologize.

16 MS. FOX: That's okay. It's not a topic.

17 MR. MANVILLE: It actually is very much a
18 topic.

19 Q. When you send out an e-mail to potential investors,
20 shopping a bid, what information do you include in your
21 e-mail?

22 A. The first three letters of the winner or
23 annuitant's last name, the state, whether it is lottery or
24 structured or casino or any other type of prize, and then the
25 actual deal terms, sans, obviously, the purchase price. If

1 it's a structured, I also provide the issuer and the owner.

2 Q. What deal terms do you include in those e-mails?

3 A. The number of payments, the frequency of the
4 payments, the amount of each payment, and, if it's a life
5 contingent deal, insurance information, proposed insurance
6 information.

7 Q. Do you propose a rate that the investor will pay,
8 or is it up to the investor to give you a rate?

9 A. Absolutely, the investor is giving me a rate.

10 MS. FOX: Could we take a break at this point.

11 THE VIDEOGRAPHER: We are going off the
12 record. The time is 10:42 a.m.

13 (A brief recess was taken.)

14 THE VIDEOGRAPHER: This is the beginning of
15 Disc No. 2. We are back on the record. The time is 10:53.

16 Q. So, if you shop a bid to your investors and one of
17 them is interested, how do they respond, also by e-mail?

18 A. Yes. Some will attempt a phone call, but I
19 generally don't pick up those phone calls. I prefer it in
20 writing.

21 Q. And I assume that the response could consist of
22 anywhere from, we'll take it, here's the rate, to, we have
23 some questions about it?

24 A. Generally, it's pretty forthright. So there's not
25 very many questions that are asked. It's basically what rate

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1 they would propose. Some will say, I really like this or I
2 have an investor that would really like this, can you let me
3 know what bids you end up with, and I'll see if I can beat
4 it. Different investors have different methodology for their
5 responses, but most just give me a rate.

6 Q. If there are multiple investors interested in a
7 single deal, does the highest rate win or the lowest rate
8 win?

9 A. Well, the most money would come from a lower rate,
10 so obviously the lower rate.

11 Q. That's what you're looking for, you're looking for
12 the lowest bid?

13 A. In most deals. Sometimes it's -- if I know
14 specifics of a transaction that might be problematic or cause
15 a delay in funding, like some funders will accept a closing
16 binder without an acknowledgment for MetLife deals, for
17 instance, because MetLife takes forever to acknowledge. So,
18 obviously, I'm not going to select a funder who has the
19 lowest rate if that funder is going to make me wait for the
20 acknowledgment letter. Can I expound? I just realized --

21 Q. Yes.

22 THE WITNESS: I'm sorry.

23 MS. FOX: Don't give me a heart attack.

24 A. I'm not the one that makes that call, just so you
25 know. I relay that information to whomever it is that is

1 actually contracted with the winner or the annuitant. It's
2 their decision ultimately.

3 Q. So Advance Funding or some other factoring company?

4 A. Right.

5 Q. How many factoring companies does Northeastern work
6 with?

7 A. Three.

8 Q. What are the other two?

9 A. I'd rather not answer.

10 Q. Are you shopping bids from those three factoring
11 companies to the same group of potential investors?

12 A. Yes.

13 Q. If none of the investors are interested in the
14 deal, then what happens?

15 A. We don't do the deal.

16 Q. Because there's no way at that point that you
17 can -- well, what if you tell them that you'll do the deal at
18 a higher rate? I mean, I know you don't propose a rate in
19 the first instance. They might come back and say, we're not
20 really interested, but, what if you say in response to that,
21 I'll tell you what, we'll do this deal at 7 1/2 percent or
22 8 percent?

23 A. I can't make those calls for any of the brokers, or
24 Northeastern, for that matter. I would just relay the
25 information I get to the president, and the president will

1 tell me how to proceed.

2 Q. Right. But is that an option? You relay that
3 information to the president, and, in some instances, I
4 assume that could be an option, get back to them and tell
5 them we'll do this deal at a rate of "x" and see if they're
6 interested in that?

7 A. If there are any options, yes. If they are
8 willing, then they would presumably offer that.

9 MR. MANVILLE: Let's make this Exhibit 2, I
10 think.

11 (Exhibit 2 marked for
12 identification.)

13 Q. So can you tell me what Exhibit 2 is.

14 A. This is an e-mail correspondence between myself and
15 the Millers, or SCS, as you will know them as, with regard to
16 the Venzant transaction.

17 Q. I note that the first e-mail in this string is an
18 e-mail from you to the Millers with a copy to Connie Younan,
19 proposing this deal and proposing a rate of 7 1/2 percent,
20 correct?

21 A. Correct.

22 Q. So there are instances where, in the initial
23 communication with the investors, you might give them a
24 percentage, a rate, that you want to do the deal at?

25 A. Not generally. If this is one that I was told

1 specifically to ask a certain funder because of their
2 appetite, then, yes, but that's not generally the way it
3 happens, no.

4 Q. Aside from that, is this a fairly typical
5 communication with a funder regarding a lottery deal?

6 A. No.

7 Q. In what way is it not typical?

8 A. Obviously, there's a lot of personal in here that I
9 wouldn't normally put in, but I have quite a good
10 relationship with SCS over the years.

11 Q. So your communications with your other funders,
12 they tend to be not so colloquial?

13 A. Correct.

14 Q. But, other than that, in terms of the substance of
15 the correspondence here, other than that and the fact that
16 your initial e-mail communicated a specific rate, is this
17 sort of fairly typical correspondence relating to a lottery
18 deal?

19 A. This is a fairly normal correspondence for a life
20 contingent lottery deal, yes.

21 Q. Because you're discussing the insurance policy here
22 and who's going to own that and what's going to happen to it?

23 A. Correct.

24 Q. And I note that, at the end of this string, you
25 advise the Millers that you are confirmed at 7 1/2 percent

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1 with Kirk A. Tovey Irrevocable Trust as assignee. The
2 \$1 million life policy will be A rated or better and will be
3 owned by SCS. Are there any other documents that memorialize
4 this transaction between Northeastern and SCS?

5 A. It's not a transaction between Northeastern and
6 SCS. This is a transaction between Advance Funding and SCS.

7 Q. Sort of brokered by Northeastern?

8 A. I made the introduction, but the deal will be with
9 Advance. We will not be involved in any way in the title or
10 the stream or anything.

11 Q. Are there any documents other than this e-mail
12 string that memorialize this transaction between Advance
13 Funding and SCS and Tovey as assignee?

14 A. Yes.

15 Q. What documents are there that state the terms of
16 this deal?

17 A. There's no document that will state these specific
18 terms, but there's always an assignment of sale agreement,
19 where Advance Funding assigned to Tovey its rights and
20 obligations in the agreement for purchase.

21 Q. And so is that a document that's executed by
22 Advance Funding and the Tovey trust?

23 A. It's not considered a contract because it's
24 unilateral, executed by only Advance Funding. It's only in
25 states such as Texas that require both parties sign an

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1 assignment agreement that you'll see both. Generally, it's
2 only the one.

3 Q. Is there any document then -- if the assignment
4 agreement is not a contract document, is there any contract
5 document that states the terms of this deal that's discussed
6 in Exhibit 2?

7 A. No. These things are done literally on an e-mail,
8 with this funder. Other funders, like I said, there are
9 RPSAs, there are broker agreements, there are certain levels
10 of contractual documentation, but SCS does not.

11 Q. All right. What's an RPSA?

12 A. A receivable purchase and sale agreement.

13 Q. And what is a receivable purchase and sale
14 agreement?

15 A. It's a transactional document between the purchaser
16 and the seller, meaning the company seller, not the annuitant
17 or winner seller.

18 Q. Do some funders require an RPSA and others not?

19 A. Correct.

20 Q. SCS is one of the funders that doesn't require an
21 RPSA?

22 A. Correct.

23 Q. What is a broker agreement?

24 A. A broker agreement would be where Northeastern
25 brokers the deal for another factoring company, in which case

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1 we would receive some sort of compensation for that
2 arrangement of funding. We don't do that for Advance
3 Funding, obviously because of the relationship. We just find
4 a funding source and then put those two together, and we're
5 out of it.

6 Q. Was one of the documents that you reviewed in
7 preparing for your deposition today the assignment of sale
8 agreement relating to the Venzant transaction?

9 A. Yes.

10 Q. And so that's in the file?

11 A. That's part of the petition, I believe.

12 Q. Do you consider Northeastern to be an agent of
13 Advance Funding?

14 MS. FOX: Calls for a legal conclusion.

15 Q. You can answer that.

16 A. I'm not sure I understand the relationship. They
17 are companies owned by brothers, and they help each other
18 out. I know, because I have the resources that I have
19 developed over the years, obviously Advance Funding didn't
20 start until much later, they haven't developed those same
21 resources, I literally just put people together, and then
22 they do the transaction. I have nothing to do with any of
23 that.

24 Q. And so, in this instance, if I understand your
25 testimony correctly, there was no contract document

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1 reflecting the terms of the agreement between Advance Funding
2 and SCS relating to the Venzant deal?

3 A. You understand correctly. There is the only --

4 Q. That's it?

5 A. -- meeting of the minds.

6 MS. FOX: You answered your question about the
7 \$2,000. Did you see that?

8 MR. MANVILLE: I did.

9 THE WITNESS: He had asked me generally.
10 That's why I didn't answer specifically.

11 MR. MANVILLE: This is exactly why I asked the
12 question.

13 MS. FOX: About proof of life?

14 MR. MANVILLE: Mm-hmm.

15 Q. So can you explain your statement to the Millers
16 that you always purchase only partial payments so there are
17 no proof of life requirements for the assignee?

18 A. Yes. A life contingent deal, payments are only
19 paid if the annuitant or winner is alive. There are certain
20 proof of life requirements, depending on the lottery or the
21 issuer, for each separate transaction. Some can be pretty
22 egregious, like a signed, notarized card once a month. And,
23 as I stated before, once you pay a lottery winner, getting
24 cooperation out of them is very, very difficult. So it is
25 standard policy for Advance, Northeastern, and most

1 companies, I believe all now, or at least those who have had
2 experience in life contingent actions, is that they leave a
3 portion of each payment due to the annuitant or winner so
4 that there's a still an obligation for either the lottery or
5 the issuer to maintain that contact with that person, and
6 they do the proof of life.

7 Q. Have you ever experienced a circumstance where
8 there was a breach by one party or the other of an informal
9 agreement of this nature, like we're looking at in Exhibit 2?

10 A. Yes.

11 Q. Can you tell me the circumstances of that, just
12 generally?

13 A. Sure. We had a transaction with wealth managers
14 where they have someone that's interested in the transaction,
15 and they either, because of documents that are required --
16 specifically, I recall an Ohio transaction. There's a
17 document that requires them to make some sort of tax
18 statement, a tax compliant statement, and the ultimate funder
19 was uncomfortable with that statement and backed out.

20 Q. And so was there a litigation arising out of that?

21 A. No. No.

22 Q. You've never experienced a lawsuit or litigation
23 arising out of this type of informal agreement?

24 A. No, sir.

25 Q. Do you have any idea how a dispute like that would

75:7-25 - Relevance; calls for speculation

1 be resolved, where you essentially have an agreement
2 reflected in two sentences in an e-mail?

3 A. Sure.

4 MS. FOX: Objection; calls for speculation.

5 Q. Go ahead.

6 A. Inasmuch as I've cultivated most of these
7 relationships and spoke with these people personally, I've
8 advised all of them that there is no transaction, there is no
9 requirement for them to go through with this, unless and
10 until the closing binder meets their approval or the approval
11 of their counsel. So there have been many transactions -- I
12 can recall one in California with a person who used to be
13 part of a corporate funder that we had that now purchases
14 these on his own directly, and he didn't like something in a
15 transaction as far as the tax lien was concerned, and we took
16 the transaction back and sold it to another funder. So there
17 are resolutions to everything. We work with people. We
18 don't shove any files down anyone's throat.

19 Q. So, in a typical factoring transaction then, let's
20 say one involving lottery payments, you get to this point
21 with your funder where you have an agreement that the funder
22 is going to buy the deal, then what happens next?

23 A. I advise the company that is doing the actual
24 transaction that I've secured funding for them.

25 Q. This would be Advance Funding in this instance?

76:1-25 - Relevance; calls for speculation

1 A. Correct, in this instance, Advance Funding. Then
2 the petition is generally filed, or it may have already been
3 filed with an open-ended assignee, knowing that they could
4 present the order later. It depends, but, generally, we wait
5 for an assignee before we even file because it's just cleaner
6 that way, and I know for a fact that we have an assignee, and
7 it's going to actually go. So a petition will be filed with
8 local counsel.

9 Q. How many lottery deals does Advance Funding do
10 every year?

11 A. I know I looked at the graph, and I remember seeing
12 22, but I think that was over the course of a year and a
13 half.

14 Q. What type of deals is the Tovey trust interested
15 in, lottery deals and also structured settlement deals?

16 A. Yes.

17 Q. Anything else? That's it?

18 A. I'm not aware of what Tovey is interested in. I
19 just present deals to SCS, and SCS will let me know if they
20 have a bid. I don't know who the ultimate funder is until I
21 accept that.

22 Q. Right. Those are the products that you make
23 available to Tovey through SCS, are lottery transaction,
24 structured settlement transactions?

25 A. IGT deals; casino winnings; Wendy's scratch off;

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1 Coke prizes; Publisher's Clearing House; sports royalties on
2 a contract; book royalties. There have been quite a few
3 different types of transactions, but, for the most part, it's
4 lottery and structured.

5 Q. Wendy's scratch off, that's my favorite.

6 A. Mm-hmm.

7 Q. Has Tovey provided funding for any other types of
8 deals, other than lottery deals and structured settlement
9 deals?

10 A. Not to us.

11 Q. Not to you, okay. What about SCS; is SCS also
12 interested primarily in lottery deals, structured settlement
13 transaction?

14 A. No. No. They have several transactions -- I'm
15 sorry, I didn't mean to interrupt. They've done several
16 transactions with IGT. They have a direct appetite for them.
17 They've also expressed interest in other casino winnings.
18 They've entertained other things that we have presented to
19 them, but, for lack of guarantee or proper rating, they
20 declined.

21 Q. Does Advance Funding get involved in any type of
22 transactions, other than lottery deals and structured
23 settlement deals?

24 A. Yes.

25 Q. Do they get involved in all of these other types of

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1 transactions that you listed or just some of them?

2 A. I would believe they would definitely get involved.
3 Anything that involves payments in the future is something
4 that they would be interested in.

5 Q. Is SCS still entertaining offers from Advance
6 Funding through Northeastern relating to any of these other
7 types of deals, IGT deals, casino winnings, that sort of
8 thing?

9 A. They entertain them, and, if they have someone,
10 they will provide that information, but, for the most part,
11 Tovey was their largest funding source.

12 Q. So, if SCS can obtain a funding source, for
13 example, for a deal involving casino winnings, as far as you
14 know, SCS would do that deal?

15 A. I don't know why they wouldn't. I don't know what
16 SCS would buy and what it wouldn't. I mean, I don't see a
17 reason why.

18 Q. And is that actually also true with regard to
19 lottery deals and structured settlement deals; if SCS could
20 find funding for those deals, to your knowledge, would SCS
21 enter into a transaction with Advance Funding related to
22 those deals?

23 A. Routinely, they have and, I would imagine, would
24 continue.

25 Q. So is the problem, if I understand correctly, that

1 Advance Funding has alleged here with regard to its
2 relationship with SCS, has to do solely with the fact that
3 Tovey is no longer providing funding for these transactions,
4 correct?

5 A. No.

6 Q. Okay.

7 A. Since the lawsuit was filed and lots of bad things
8 were said before the lawsuit was -- or after -- I'm not
9 exactly sure -- they've had a disinterest in funding most
10 transactions from us, waiting for the resolution of this
11 lawsuit. They anticipate they're going to speak with Tovey,
12 but they're not optimistic that he will come back on board.

13 Q. Do you have an understanding of the cause of this
14 disinterest that you just referred to?

15 A. Oh, definitely. Tovey thought that lottery was
16 much more secure, and, in the normal course of business, it
17 is, but this lawsuit caused them to second-guess lottery,
18 which is unfortunate.

19 Q. Well, let me break that out a little bit because I
20 want to make sure we're being clear. Is the disinterest that
21 you referred to, is that a disinterest on the part of Tovey
22 in participating in lottery transactions or structured
23 settlement transactions with Advance Funding?

24 A. I think it's both, SCS and Tovey.

25 Q. Why do you think it's both, SCS and Tovey?

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1 A. Why do I think it is?

2 Q. Yes.

3 A. Because the recent transactions I've sent over to
4 them, they have either declined to bid or specifically told
5 me that they're not going to bid until this is resolved.

6 Q. SCS has told you that?

7 A. That would be the only contact I have, yes.

8 Q. Has SCS told you that in written communications or
9 on the phone?

10 A. Both.

11 Q. Both. Okay. The written communications are e-mail
12 messages?

13 A. Correct.

14 Q. And have all of those e-mail messages been produced
15 in discovery in this case?

16 A. If they were discoverable with our searches in our
17 computer, yes.

18 Q. Are you aware of any e-mail message from anyone at
19 SCS to you or anyone at Northeastern or Advance Funding
20 relating to SCS's willingness to enter into lottery or
21 structured settlement deals that have not been produced in
22 this litigation?

23 A. No.

24 Q. You mentioned that you've had some phone calls with
25 folks at SCS about this?

1 A. Yes. When the initial phone calls came in from
2 Eshel, he incited panic, frustration. I received a very
3 panicked call from Scott Miller, wherein he stated Eshel had
4 alleged some pretty malicious and definitely false things
5 about Advance Funding. And he explained that it was not
6 good, that he wanted Tovey protected, and he immediately
7 demanded that we buy back the Venzant transaction.

8 Q. How many other phone calls have you had with
9 Mr. Miller about this issue?

10 A. How many?

11 Q. Yes.

12 A. I would say probably a total of five.

13 Q. Five. What's the next one that you can recall?
14 Was there anything else that you talked about with him during
15 that first phone conversation?

16 A. I asked him the specific things that were said to
17 him.

18 Q. And what did he say?

19 A. He said that BOFI said that we had hired an
20 ex-employee of theirs, who had stolen a database, and we were
21 purposely taking their transaction and that we have bad
22 files, do bad things. It was just a generally very nasty
23 conversation. He alleged that BOFI had a legal right to the
24 payments, that they were going to sue, and that they were
25 going to bring Tovey into the lawsuit, even though they know

1 the funders have nothing to do with contractual rights and
2 obligations and the contracting of such. And he basically,
3 in no uncertain terms, told me to throw money at the matter
4 to make it go away.

5 Q. Were those the terms that you think he used?

6 A. Those were not his exact words, but he basically
7 said make it go away.

8 Q. Mr. Bar-Adon said that to Mr. Miller?

9 A. No, Mr. Miller told me to make it go away.

10 Q. Okay. Did Advance Funding agree to buy back the
11 file?

12 A. We definitely said that we would, but we said,
13 nothing has been done, this is posturing. After I
14 investigated and spoke with Advance Funding, I realized that
15 Eshel's comments were completely false and defamatory, and so
16 I spoke with Scott and told him all that I had found out,
17 that Advance Funding had not hired any ex-employee who had
18 stolen the database. I told him that a UCC is nothing more
19 than notice to the world that you have a potential interest.
20 I told him that we had done court searches and that neither
21 location revealed any filing by BOFI and reminded him that,
22 under law, you do not have contract rights, absent a court
23 approval. I told him that we would not likely pay BOFI to go
24 away, but that we would indemnify them. Advance stands
25 behind its deals 100 percent, I believe was exactly the

1 wording I used. And he responded with, "Well, we'll talk
2 about it, but keep Tovey out of it."

3 Q. Was this a phone conversation that you had with
4 him?

5 A. Yes, definitely.

6 Q. So this was the follow-up to the initial
7 conversation?

8 A. There were phone conversations and e-mails, but
9 most was phone, some was definitely e-mail, because I was
10 communicating with their counsel.

11 Q. And that's Ms. Schwartz?

12 A. Yes, and she agreed.

13 Q. She agreed to what?

14 A. Everything that I had said about the UCCs not being
15 any type of lien, that they had never filed, therefore, they
16 had no contract rights. Their interference was improper.

17 Q. When Mr. Miller said we'll talk about it, what did
18 he mean, we'll talk about it internally at SCS?

19 A. Yes.

20 Q. The Millers would talk about it?

21 A. Yes. Because he had initially asked me to buy back
22 the file, and my attempts were to calm him down, there is no
23 real threat here, don't worry, and he eventually came back
24 and coalesced.

25 Q. What do you mean by that, did he call you back?

1 A. Yes.

2 Q. What did he say?

3 A. He agreed that we would handle the defense, if any
4 was required. And I told him I find it curious that Eshel
5 hasn't contacted us yet.

6 Q. Do you remember when that phone call took place?

7 A. I don't, but I believe there is definitely an
8 e-mail to that respect that was in discovery, and I recall
9 reading that. Many times, I think I told him that Eshel had
10 never contacted us, by any method, and that is very much
11 ordinary in our industry.

12 Q. So Mr. Miller called back, and he agreed that
13 Advance Funding would handle the defense, if there was any
14 defense required?

15 A. Correct.

16 Q. Did you discuss his earlier request that Advance
17 Funding keep Tovey out of it?

18 A. Did we discuss keeping Tovey out of it? Not at
19 that time.

20 Q. If he had gotten back to you and said, we talked
21 about it, and we still want Advance Funding to buy back the
22 file, would Advance Funding have bought back the file?

23 A. Absolutely. He actually went so far as to say, not
24 only do we want you to buy that one back, we want you to buy
25 14 others back, he doesn't want any lottery deals now, which

1 caused us a little bit of concern at the time obviously.

2 Q. Why didn't Advance Funding -- did Advance Funding
3 see some possibility that BOFI would actually file a lawsuit
4 and bring in SCS and Tovey as defendants?

5 A. I'll be very honest with you. I believe I even
6 stated in an e-mail definitely, possibly by phone, that there
7 was no way that they would do that. It didn't make any sense
8 whatsoever. It just -- BOFI knows better. I hate to say it,
9 but Eshel has been around for a very long time. He has been
10 in this business, I believe, longer than I have. And, when
11 you have a dispute with a company, the normal thing, what
12 every other factoring company has ever done is you call that
13 factoring company and you say, hey, did you not know we had
14 this deal, blah, blah, blah, blah, whatever the circumstances
15 are. And then sometimes there is an exchange of money,
16 sometimes there's not, sometimes there's an explanation of,
17 well, this is what happened, and this is why we proceeded.
18 We never had that opportunity.

19 Q. David Bavli did call you, right?

20 A. He called me, and, because I'm not Advance, I was
21 not able to talk to him. I suggested he call Dan.

22 Q. And then he did call Dan?

23 A. I believe he called Dan, but there was never a
24 conversation. I know I relayed him to Dan.

25 Q. Did you all reach out to Mr. Bar-Adon or Mr. Bavli,

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1 affirmatively reach out to try to resolve the matter?

2 A. We reached out via a tortious interference letter,
3 a cease and desist.

4 Q. You just said custom in the industry is essentially
5 to pick up the phone and call and see if you can work it out.

6 A. Absolutely.

7 Q. Did you try do that?

8 A. That wasn't our position. We were the company that
9 secured the appropriate judicial order. It would have been
10 their position to call us if they had a dispute. We saw no
11 dispute. They never even filed a petition for approval. So
12 how they asserted they had contract rights is beyond me. I
13 just -- I thought it was their continued practice of
14 interfering with our funder relationships, as they had done
15 with WMS. This is just a history of practice that they have.

16 Q. Tell me about WMS.

17 A. They did the same exact thing. They called WMS and
18 said nasty things about Advance Funding and ruined that
19 funding source.

20 Q. And when did that happen?

21 A. Years, years earlier.

22 Q. How many years earlier?

23 A. Probably 2012, maybe 2011.

24 Q. What were the circumstances? What caused -- was
25 this Mr. Bar-Adon again?

1 A. No. I don't believe Mr. Bar-Adon was with BOFI at
2 the time.

3 Q. Who was it?

4 A. Maybe Daniel Heffner. I'm not exactly sure who
5 made the call.

6 Q. What were the circumstances that prompted whoever
7 it was to make this call?

8 A. I actually can't state to their circumstances or
9 what may have led them to make such a call. It was so
10 unbelievable that it's hard to believe. The same with this
11 circumstance. I really, really did not believe that a
12 lawsuit would ever be filed under the fact circumstances of
13 this matter.

14 Q. What were the facts and circumstances of the --
15 what was it the WMS matter?

16 A. I would have to review those notes. I wasn't
17 prepared for that. I just prepared for the subject matter
18 that you presented, but I can certainly -- if you want to
19 call me later, I would have no problem looking into that and
20 getting back to you. I don't think you'll like the results
21 of that one.

22 Q. But you do have an opinion about their conduct,
23 even though you can remember the facts that support that
24 opinion, correct?

25 A. I have an opinion, and my opinion, which really

1 isn't relevant because I'm not Advance Funding, but my
2 opinion is they get involved when they shouldn't get
3 involved. I know that there were two instances where they
4 filed, over a year after, to have Advance Funding's orders,
5 judicially approved orders, overturned using a best interest
6 standard, which is not a standard in lottery, it's a
7 structured standard. So I don't know if it's lack of
8 experience or what or some personal vendetta. It's hard for
9 me to understand why BOFI is continuing to interfere in
10 Advance Funding deals. I just don't understand it. Are you
11 aware of these transactions, that they attempted to vacate --

12 Q. I'm asking you about them.

13 A. Okay. They attempted to vacate a Georgia and a New
14 York order that Advance Funding had secured via the
15 appropriate judicial approvals, did everything correct, but,
16 because they said they wanted to offer more money, it would
17 be in the best interests of the winner, that the court should
18 vacate Advance Funding's year or so old order and let them
19 buy the payments. That's not done in this industry, sir.
20 That's just malicious.

21 Q. Offering the annuitant more money is malicious?

22 A. That's not what I said. I said filing a court
23 petition, asking that someone -- a factoring company's prior
24 court order, judicially approved order, be vacated so that
25 they could then offer more money, knowing that they would be

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1 interrupting another funding source. That's the malicious
2 part.

3 Q. So, here, if I understand your testimony, you're
4 telling me that, although Mr. Bar-Adon had spoken with
5 Mr. Miller and indicated an intention to file a lawsuit and
6 indicated that he believed that Advance Funding had
7 tortiously interfered with BOFI's contractual relationship
8 with Ms. Venzant, you concluded that that was unlikely to
9 happen, and so, therefore, did not take steps to protect your
10 broker or investor in this case; is that right?

11 A. No.

12 Q. What's wrong about what I just said?

13 A. Well, the steps we took were to offer
14 indemnification, should any legal action be filed. My belief
15 that one wouldn't be filed did not stop me from preparing.

16 Q. And did you believe that offering indemnification
17 to SCS and Tovey would be sufficient to maintain the
18 relationships with those two entities?

19 A. I had no idea if that would be sufficient. I was
20 trying whatever I could to maintain that relationship. It
21 was valuable.

22 Q. But trying whatever you could didn't include
23 actually offering to buy back the file, like Mr. Miller
24 requested?

25 A. We agreed that we would. We didn't feel it would

1 be necessary because nothing had actually happened at that
2 point.

3 Q. After the lawsuit was filed, did you offer to buy
4 back the file?

5 A. After the lawsuit was filed, it was too late.

6 Q. Why?

7 A. Because they didn't want Tovey named in a lawsuit,
8 so obviously that had already happened, the damage was done.

9 Q. Did you have a conversation with Mr. Miller after
10 the lawsuit was filed about whether, if Advance Funding
11 bought back the file, the relationship could be maintained,
12 or did you just assume that the damage was irreparable?

13 A. I don't think there were any assumptions. There
14 were lots of conversations. Basically, at that point, they
15 had calmed down. Eshel hadn't made any further contact at
16 that point, so they had basically calmed down, listened to
17 reason, consulted with their counsel, and understood the
18 legal ramifications and that the unlikelihood that BOFI would
19 succeed.

20 Q. And so, as far as you know, does SCS currently
21 blame this lawsuit on BOFI and not Advance Funding?

22 A. I can't answer to what they think. We haven't had
23 any substantive conversation in that regard. Basically, all
24 I've done is alert them as to the motions for summary
25 judgment and that BOFI still wanted to pull them into a

1 deposition and Mr. Tovey, as well, and we would do our best
2 to protect Tovey to not have to be deposed.

3 Q. Have you ever had a conversation with Mr. Tovey?

4 A. Never.

5 Q. Has SCS asked Advance Funding to take any specific
6 steps to get the lawsuit resolved promptly?

7 A. Other than the initial conversation, where I told
8 you he intimated to me to throw money at it to make it go
9 away.

10 Q. Right.

11 A. I believe he's comfortable with the defense that
12 we've paid for.

13 Q. I assume that, after Mr. Miller asked you to throw
14 money at the matter to make it go away, Advance Funding did
15 not do that, correct?

16 A. There was nothing to throw money at. Eshel never
17 made contact with us.

18 Q. But you never --

19 A. We didn't know until the lawsuit, and then it was
20 too late.

21 Q. Why do you think it was too late after the lawsuit
22 was filed?

23 A. Because their intention, their desire, was to keep
24 Tovey from being named in a lawsuit. They specifically
25 stated that. I believe that's in the e-mails.

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1 Q. Do you believe there was a risk between
2 Mr. Bar-Adon's initial communications with Mr. Miller and the
3 filing of the lawsuit that BOFI would file a lawsuit
4 involving SCS and Tovey?

5 A. I really believed that there was no way Eshel would
6 ever do that. There's no legal standing for that. And Eshel
7 knows. Eshel is a lawyer. Eshel has been in this business.
8 I just don't understand how this happened.

9 Q. Have you read the legal briefs that have been filed
10 in this case?

11 A. I have.

12 Q. Do you understand the arguments that have been made
13 on both sides?

14 A. I understand that they have made arguments. I
15 don't understand their legal arguments. They're not valid.

16 Q. You don't understand the arguments that BOFI has
17 made?

18 A. I understand them to not be valid.

19 Q. You believe they are invalid?

20 A. I believe, by law, they are invalid, and I believe
21 the judge has agreed.

22 Q. Do you believe reasonable minds could differ on
23 that issue?

24 MS. FOX: Objection to the form of the
25 question. It's beyond the scope of what we're talking about

1 here today.

2 A. I don't know what you mean by reasonable minds,
3 but, specifically, Eshel, I don't think his was reasonable.

4 Q. I mean reasonable minds. Do you think it's
5 possible to see it the way BOFI sees it? Do you think that
6 would be at all reasonable, or you just don't see it that way
7 at all?

8 A. I don't see it the way BOFI has put it forward, and
9 I don't think BOFI sees it that way either.

10 Q. Why do you think BOFI doesn't see it that way?

11 A. Because it's just not legally factual. It's
12 well-known in the industry. Basically, it's a race to the
13 court house, whoever gets the order first wins. The fact
14 that they are asserting some sort of contract rights, knowing
15 that they never even filed for approval of those rights, it's
16 kind of ludicrous.

17 Q. Do you have an understanding of why BOFI waited to
18 file?

19 A. I understand why they said they would wait to file,
20 but no one has ever done that. You don't wait for a
21 contestability period. You might wait to pay for the
22 contestability period, but we don't even do that.

23 Q. So Advance Funding doesn't wait for the
24 contestability period to expire?

25 A. No. And this case is proof of that.

1 Q. Right. How many deals has Advance Funding done
2 involving life contingent payments and a life insurance
3 policy?

4 A. Several.

5 Q. How many?

6 A. I can't state with specificity how many. I don't
7 recall that term.

8 Q. More than two?

9 A. Oh, absolutely.

10 Q. More than five?

11 A. I'm most certain it's more than five.

12 Q. And, in every instance, Advance Funding has not
13 waited for expiration of the contestability period in order
14 to obtain court approval and obtain -- and make the payment
15 to the lottery winner, correct?

16 A. Correct. Not only would we not wait, that would
17 just open yourself up to exposure and poaching for that
18 length of time. Of course, get your court approval, make it
19 a condition precedent that you may want to hold payment back,
20 but to not file, to not even receive approval for a deal
21 you're so sure you want to do, it just doesn't make sense to
22 me. It's just not done.

23 Q. So getting back -- I've gotten a little off track
24 here -- getting back to a question I was asking earlier, you
25 said Advance Funding might do somewhere in the neighborhood

1 of 22 or so lottery deals a year?

2 A. I remember seeing that on the spreadsheet, and I
3 believe I said that was probably over the course of a year
4 and a half.

5 Q. A year and a half. Okay. Fair enough. And are
6 those deals all over the country?

7 A. Yes.

8 Q. How many lottery deals -- do you know how many
9 lottery deals Advance Funding did in 2014?

10 A. I think the number was 18.

11 Q. How about 2013?

12 A. I would be lying if I tried to speculate. I think
13 they average around 21 deals a year.

14 Q. Has the number of deals that Advance Funding --
15 lottery deals that Advance Funding has done -- decreased
16 since the filing of this lawsuit?

17 A. I think the number of potential deals that they
18 could have done has decreased since the filing of this
19 lawsuit because there were several deals we couldn't obtain
20 funding for. The ones that we did do, obviously we had to
21 pay a little bit higher, but such is -- that's the result
22 unfortunately. I don't think the number is any guaranteed
23 amount each year. It's, if we reach the lottery winners,
24 they want to do a transaction, they do a transaction. We
25 still have a lottery funding source, it's just not as

1 advantageous.

2 Q. Before the filing of this lawsuit, were there
3 lottery deals that Advance Funding did that it was unable to
4 obtain funding for?

5 A. There may have been one that it was unable to
6 obtain funding for, but we had a really good relationship
7 with SCS, in that Tovey apparently liked lottery deals, so he
8 basically took everything that we proposed.

9 Q. How many brokers like SCS are there in the
10 industry?

11 A. I wouldn't be aware of all of them because that's
12 not my job to develop the source. Mine is just to cultivate
13 it and make it a comfortable source.

14 Q. Do you have any idea how many there might be?

15 A. I really don't.

16 Q. Ten? 100? 1,000?

17 A. I really do not. I don't do any research in that
18 regard. It's just not in my purview.

19 Q. About how many funding sources do you know are
20 there in the industry; do you have any idea?

21 A. I do not.

22 Q. With regard to the brokers that Advance Funding
23 works with, do you know how many funding sources those
24 brokers have?

25 A. I do not.

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1 Q. Do you know if SCS has funding sources other than
2 Tovey?

3 A. Yes.

4 Q. How many; do you know?

5 A. I don't.

6 Q. Do you know who they are? I'm not going to ask you
7 who they are.

8 A. I do know of a couple only because they've
9 purchased deals from us.

10 Q. Lottery deals?

11 A. Lottery and structured, yes.

12 Q. And was that before the filing of the lawsuit,
13 since the filing of the lawsuit, or both?

14 A. Mostly before.

15 Q. Do you have any idea why those funders -- not
16 Tovey, but those other funders -- are not buying lottery
17 deals now?

18 A. Oh, I haven't been told that they're not. They
19 might still be. They certainly aren't buying lottery deals
20 from us.

21 Q. Why not; do you know?

22 A. SCS has made it clear, until this is done, they're
23 not buying anything lottery related to us -- excuse me --
24 from Advance or anyone until this is done. So I think
25 they've just shut down lottery altogether.

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1 Q. So you're telling me there has been a communication
2 from SCS to you saying, until this lawsuit is over, we will
3 not buy any more deals, any more lottery deals, from Advance
4 Funding, regardless -- even if we have a potential funding
5 source for it?

6 A. There's no such communication, no.

7 Q. That's what I heard you just telling me.

8 A. No. I said we've presented bids to them. They've
9 either declined or just not presented a bid. I can't
10 speculate as to why they did or did not.

11 Q. Okay. Do you know what types of funders there are
12 in the industry? What's the range?

13 A. I really don't know anything about that. I'm
14 sorry. It's just not something I ever had to pay attention
15 to. The funding source is brought to me by either one of the
16 presidents, and then they develop the entire relationship.
17 It's only my job to ask them what documents they're going to
18 require in the closing binder, what's their turnaround time
19 for review, that sort of thing. The actual rates and
20 discussions were held before my involvement. And then, of
21 course, I'm the one that presents the closing binders, so I
22 have most of the contact from that point forward. And then I
23 will be the one presenting the streams to see if they are
24 interested in bidding.

25 Q. But I gather that, at Advance Funding and

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1 Northeastern, the responsibility for researching and
2 identifying possible funding sources and then cultivating
3 relationships with those funding sources, that's up to the
4 Cevallos brothers, correct?

5 A. Correct.

6 Q. And you have no insight into that process, correct?

7 A. Sometimes I am brought in on conversations,
8 sometimes I'm not. How they found those people, that was
9 what I was relating to you, I have no idea what their source
10 of information is.

11 Q. And are they also the ones who are responsible for
12 managing and cultivating a funder? I recall a discovery
13 response where Advance Funding says that it takes years to
14 develop a funding source. Who does that work? Is that a
15 Cevallos brothers who develop those sources?

16 A. They develop the source; I cultivate it. I'm the
17 one that develops the trust, the clean files, the reputation.
18 The fact that our files are so clean, and I've actually been
19 told this by SCS and other funders, they have a level of
20 comfort with our transactions. That takes a lot of time to
21 get to that point. Some of the other factoring companies,
22 I'll be very honest with you, because I know, where
23 Northeastern broker deals for these companies, as well,
24 they're sloppy; their documents aren't reliable; they're
25 outdated; they're not signed; it's just a mess. I guess my

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1 experience in this industry has proven to me at least that,
2 if you present a clean file consistently, that you're going
3 to develop a better relationship between yourself and your
4 funders.

5 Q. But this aspect of your job, maintaining clean
6 files and so forth, this is what happens after the funder is
7 brought in, I gather, right?

8 A. After the introduction, yes.

9 Q. So John Cevallos will bring in potentially a new
10 broker or a new funding source, and presumably he's been
11 talking to that person about doing a lottery deal or doing
12 lottery deals, and then you're the one who actually kind of
13 works the process, and, over time working with that funder,
14 cements the relationship, let's say?

15 A. Right. Except for, more often than not, it's Dan.
16 Dan is more active in the business. John, he's accomplished,
17 he's a traveler, so he's not as active hands-on. Dan is very
18 hands-on, still building his business. So he will be the one
19 providing those leads to me and the information putting me on
20 the phone calls. But, yes, I am the one, from that point
21 forward, asking, what do you require in your closing binder,
22 what is your review time, basically developing the parameters
23 of the relationship. I will take the documents and review
24 them if there's an RPSA. I will take the documents and
25 review if there's a broker agreement. If there's anything

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1 beyond the introduction and saying, do you want lottery
2 deals, do you want structured deals, what kind of rates,
3 that's them. Everything beyond that is me.

4 Q. Okay. Does Advance Funding want to work with as
5 many brokers and funders as responsible?

6 A. Absolutely.

7 Q. So you'd rather be sending an e-mail, not to 7
8 people, but 70 people?

9 A. Absolutely. Competition is healthy.

10 Q. What does Advance Funding look for in a broker like
11 SCS that Advance Funding might want to enter into a business
12 relationship with?

13 A. Inasmuch as I'm not the one to develop that lead, I
14 have no idea how they got the source, what they actually were
15 looking for to get that source. All I'm told is, this
16 company is going to start buying deals from us, you know,
17 figure it out.

18 Q. And is that also true of funders or investors?

19 A. I thought that's what we were talking about.

20 Q. I specifically asked about brokers.

21 A. Oh, I'm sorry. Oh, I'm sorry. The broker -- I
22 apologize then. I have to back up. I don't have anything to
23 do with the brokers. That is still Dan and John.
24 Northeastern, before my starting there, already had
25 relationships with brokers or other factoring companies that

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1 we broker the deal for, so to speak. And, depending on
2 those, sometimes we're in the chain of title, sometimes we're
3 not, and there's a side deal, sometimes it's a handshake,
4 sometimes it's an agreement. It just depends on what their
5 level of comfort is with one another. For instance, Stone
6 Street -- and I'm not giving up any proprietary information
7 by saying that, so we're good -- Stone Street is one such
8 company that has its own funding sources; however, it doesn't
9 have a funding source for a particular type of transaction,
10 so they'll bring that to us, and vice versa.

11 Q. Is it Dan Cevallos who mostly brings in new leads
12 for Northeastern to work with in terms of funders and
13 brokers?

14 A. They bring in new leads as a funding source, but,
15 because they're brothers, they share information. There is
16 no competitive nature between the two of them.

17 Q. I gather that Northeastern works -- I think you
18 testified to this earlier, that some of your funding sources
19 are brokers like SCS, and some of them are sources that
20 self-fund; is that correct?

21 A. That's true. By self-funding they have -- they're
22 wealth managers, and their clients are the purchasers, so
23 they actually either have the funds in some sort of account,
24 trust account or such, that they have access to it. So the
25 funds actually come from SCS. We never get funds directly

1 from, say, Tovey.

2 Q. Are there impediments that you're aware of to
3 Advance Funding or Northeastern developing business
4 relationships with particular funders or brokers?

5 A. Yes.

6 Q. So tell me about some of those.

7 A. Northeastern has a relationship with Great West,
8 which is a very big industrial funder. So, again, I'm not
9 giving out any proprietary information. There are certain
10 parameters that you have to attain before you can become a
11 Great West broker. And Advance Funding has not, up until
12 now, qualified, and because Northeastern has that
13 relationship already, there's no need for them to continue to
14 try. So they just, whenever it's a Great West funding, then
15 Northeastern will be in the chain of title, and sometimes
16 there's compensation, sometimes there's not. It all depends.
17 I know, at least for purposes of states that have a
18 withholding, Great West -- excuse me -- Northeastern handles
19 that.

20 Q. Are there any other types of impediments to Advance
21 Funding or Northeastern developing relationships with
22 particular brokers or funders?

23 A. I'm not sure what impediment there would be. I
24 believe they're both independent, they're out there, but,
25 like I said, John is, for lack of a better word, semiretired.

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1 So I think the more proactive is going to be Dan.

2 Q. Let's talk for just a little bit about the Venzant
3 transaction. Can you sort of summarize what happened? We've
4 talked a little bit about it already.

5 A. Sure.

6 Q. I know, for instance, we've talked about the
7 initial contact between Advance Funding and Ms. Venzant in
8 spring 2013 and whether that was Advance Funding reaching out
9 to her or whether it was her reaching out to Advance Funding.
10 So we can sort of gloss over some of the stuff we've covered.

11 A. Okay.

12 Q. But, if you could give me a summary of what
13 happened, I would appreciate it.

14 A. Sure. Obviously, contact was made. One of them
15 believes it's one, one believes it's the other, but, however,
16 they did obviously make contact, had several discussions, and
17 came to contract terms. Those contract terms were presented
18 to Elyse, Elyse prepared a contract, and then the petition
19 was filed.

20 THE WITNESS: I believe, Susan, you filed
21 that.

22 A. The order was secured about a month after that,
23 and, in the meantime, due diligence was done by Elyse, and
24 then we funded.

25 Q. I do want to ask you a specific question about what

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1 I just told you I didn't need to ask you about. So this is
2 Advance Funding's answer to Interrogatory No. 5, which asked,
3 "State with specificity how Sheena Venzant first became a
4 client of AF." AF answered, "To the best of my knowledge, a
5 salesperson at AF left a detailed voicemail message for
6 Ms. Venzant on April 29, 2013." Where did that information
7 come from?

8 A. Barbara Guerra.

9 Q. When you spoke with Ms. Guerra, was she that
10 specific? Did she remember leaving a voicemail for
11 Ms. Venzant on April 29, 2013?

12 A. She didn't remember that specific date. As a
13 matter of fact, when I spoke with her, she was unclear. She
14 said that was the first time she had reached out to
15 Ms. Venzant, and I believe she had looked at her phone
16 records back when this initially happened. I'm not exactly
17 sure, but she said that was the first time she reached out to
18 her beyond when she had reached out to her the first time
19 after the initial win.

20 Q. That was going to be my next question. How did she
21 come up with that specific date? What did she look at? You
22 suggested that she might have looked at her phone records.
23 Do you know what she looked at?

24 A. I didn't I ask her that. I asked her, because I
25 had read Sheena's affidavit, I said, "Are you sure?" And she

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1 said, "I'm not 100 percent sure." She said, "I just remember
2 that that's the first time I contacted her."

3 Q. Do you know who spoke with Ms. Guerra in preparing
4 these answers to interrogatories?

5 A. I spoke with Ms. Guerra.

6 Q. In connection with the drafting of these
7 interrogatory answers?

8 A. I spoke with her; Dan spoke with her. It's
9 possible Suzanne -- Susan spoke with her, I'm not sure.

10 Q. The answer to Interrogatory No. 1 says that, "Dan
11 Cevallos, as president of AF, is answering these
12 interrogatories." So is it your understanding then that he
13 had a conversation with Ms. Guerra about the date on which
14 she left Ms. Venzant a voicemail message?

15 A. Sure. I believe I just answered that, saying that
16 Dan and possibly Susan.

17 Q. Did you have any phone conversations with
18 Ms. Venzant in the spring of 2013?

19 A. I've never had any conversation with a winner or an
20 annuitant, ever.

21 Q. E-mail communications with her?

22 A. Never.

23 Q. Not you, okay.

24 A. No.

25 MR. MANVILLE: Let's make this No. 3.

1 (Exhibit 3 marked for
2 identification.)

3 Q. I am handing you what's been marked Exhibit 3.
4 This is a long e-mail string, beginning on June 24, 2013, and
5 ending on March 13, 2014, between you -- I think you are
6 certainly the common thread -- and a number of people,
7 including the Millers, Amy Schwartz, and a few other folks.
8 I want to ask you a few questions about this. So, if you
9 look at your message -- and, first of all, I guess, did I
10 describe this accurately? Is this what we're looking at
11 here?

12 A. That's what it appears to be, yes.

13 Q. Take a look at an e-mail from you to Amy Schwartz
14 and the Millers, copying a few other folks, dated June 28,
15 2013. So part of this e-mail -- is this a list of the
16 materials that are going to be in the closing binder?

17 A. The specific e-mail that you're referring to, no.

18 Q. Well, maybe we're not looking at the same one.

19 A. Oh, sorry, I'm looking at the one from Amy. Hold
20 on one second. Oh, yes. I apologize.

21 Q. So this is actually the e-mail from you to
22 Ms. Schwartz and the Millers, transmitting the documents
23 constituting the closing binder?

24 A. It is.

25 Q. And then, looking at the next e-mail in this

1 string, this is an e-mail from Ms. Schwartz to you of the
2 same date, and then a response from you to her of the same
3 date. I take it that the text here, the larger text, is your
4 response to her e-mail; is that right?

5 A. That is correct.

6 Q. If you see in paragraph 1 there, you said, "They
7 attempted to do a deal with Ms. Venzant, but were unable to
8 secure court approval." What was your basis for making that
9 statement?

10 A. Court searches.

11 Q. Why did you say they were unable to secure court
12 approval?

13 A. Because you can't receive court approval if you
14 don't even apply. You have to petition the court.

15 Q. So you were not intending to suggest that they had
16 applied for court approval, but been denied?

17 A. No, I wasn't intending to imply anything.

18 Q. You also say, "She advised that she intended to
19 send a formal cancelation letter." Is this what Ms. Venzant
20 told Advance Funding in the spring of 2013, that she intended
21 to send a formal cancelation letter to BOFI?

22 A. Right. And I had to state it that way because I
23 didn't have a copy of it.

24 Q. But what you're stating here is what she told you.
25 Is that what she told Advance Funding, that she intended to

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1 send a formal cancelation letter to BOFI?

2 A. You're using what she told you, and you're saying
3 what she told Advance Funding. This would be what she told
4 Advance Funding. I don't have any contact with Ms. Venzant.

5 Q. I understand. That's why I asked.

6 A. Oh, okay.

7 Q. Is it your position, as Advance Funding's 30(b)(6)
8 representative, that Ms. Venzant advised Advance Funding that
9 she intended to send a formal cancelation letter to BOFI?

10 A. She advised Barbara Guerra that she had sent one.
11 I just did not have a copy of it.

12 Q. Why didn't you say here that she advised that she
13 had sent a formal cancelation letter to BOFI, I will secure a
14 copy?

15 A. I can't say why I used one word over the other, but
16 I clearly said next, I will secure a copy of said letter if
17 you'd like.

18 Q. Right. So, by June 28, you didn't have a copy of
19 the letter, correct?

20 A. I did not. I had received an unsigned copy, which
21 I told you is not verification of anything, to me.

22 Q. Do you recall when you received the unsigned copy?

23 A. I do not.

24 Q. The very last e-mail in the string is an e-mail
25 from you to Scott Miller and Amy Schwartz, copied to the

Page 110, lines 7-11:
Hearsay if offered for
the truth of the matters
asserted

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1 other Millers. And you state, "Well, we spoke to Venzant and
2 have gotten to the bottom of the problem." Who spoke with
3 Venzant?

4 A. The only person that I know of that had contact
5 with her was her sales rep, Barbara Guerra.

6 Q. "And, according to you, Ms. Venzant wanted to pay
7 them back the 15 K, but they said, 'No, they want 21 percent
8 interest in addition.'" That's what Ms. Venzant told
9 Ms. Guerra?

10 A. That's what Ms. Guerra told me.

11 Q. That Ms. Venzant had told her.

12 A. That's what she gathered from their conversation.

13 Q. And then you say, "Obviously, that has caused a
14 problem, as she does not feel she should pay them back
15 interest when they jerked her around for over a year."
16 What's your basis for stating that BOFI, quote, "jerked her
17 around for over a year," end quote?

18 A. I'm just relaying what was told to me.

19 Q. Your testimony is that Ms. Guerra told you that
20 Ms. Venzant had told her that BOFI jerked her around for over
21 a year?

22 A. That's what Ms. Guerra told me, that, following her
23 conversation with Ms. Venzant, this is what she told me.

24 Q. But did she say that Ms. Venzant had told her that;
25 do you recall?

Page 111, lines 19-23:
Hearsay if offered for the
truth of the matters asserted

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1 A. Absolutely no recollection of what she may have
2 told me, but, this is what I wrote.

3 Q. You don't have any independent recollection of the
4 conversation on which this e-mail was based? I realize this
5 was a year and a half ago.

6 A. Right, several years ago, but what you're asking
7 from me is exactly what she told me. I don't have that type
8 of recall. I'm sorry. I do recall a conversation.
9 Generally, that's what she said. So I wouldn't have dreamed
10 up the language myself. I didn't have the conversation with
11 Ms. Venzant. So I'm probably paraphrasing what she said
12 because Barbara is quite verbose.

13 (Exhibit 4 marked for
14 identification.)

15 Q. Handing you Exhibit 4, is this a copy of the signed
16 letter that you received or that Advance Funding received
17 sometime after June 28th, 2013, from Ms. Venzant?

18 A. Yes.

19 Q. Because, frankly, I don't think I've ever seen the
20 unsigned version, is the unsigned version identical to this,
21 but without the signature line?

22 A. From my recollection, I don't recall exactly what
23 it looked like. It wasn't something we maintained a copy of
24 because I didn't find it to be of value, so it was discarded.

25 Q. I thought you reviewed it as part of your

1 preparation for today's deposition?

2 A. I reviewed this as part of my deposition.

3 Q. So I want to clarify, because I think you did tell
4 me that you had reviewed the unsigned letter, but, in fact,
5 Advance Funding does not have that letter in its file?

6 A. I don't believe we do. I believe your question was
7 whether we presented that as part of our discovery response.

8 Q. I asked you that, as well.

9 A. Okay. I don't recall whether that's in there or
10 not. I definitely have seen this letter. I was referring to
11 the letter I was first given, but she was at work, so she
12 didn't have the one that she had actually sent. This is a
13 copy of the one she actually sent.

14 Q. So your testimony -- going back to Exhibit 3 --
15 your testimony is that, as of June 28, 2013, you had an
16 unsigned copy of the letter, but you did not yet have a
17 signed copy of the letter, correct?

18 A. I had seen a copy of the unsigned letter, but I had
19 not seen a copy of the signed letter.

20 Q. And, sometime subsequent to June 28, 2013, Advance
21 Funding obtained a signed copy of the letter, correct?

22 A. I believe there's an e-mail in here somewhere where
23 we actually provided it to counsel. So, instead of me
24 saying, I'd rather rely on that. But I can say that they
25 wouldn't have funded without it.

1 Q. They wouldn't have funded without the signed
2 letter?

3 A. Generally. So we made every attempt to get it
4 then. I believe, that day she presented it, as soon as she
5 got home.

6 Q. And the difference in your mind between an unsigned
7 letter and a signed letter that the lottery winner says she's
8 sent to the company that previously entered into a deal with
9 her is that this is more likely to be --

10 A. The one she actually sent.

11 Q. -- accurate?

12 A. No, the one she actually sent.

13 Q. She's more likely to be telling the truth about all
14 this?

15 A. No. She was more likely not to send one that she
16 hadn't signed. From what I understood, she was communicating
17 with what we now know as an ex-employee of BOFI, who gave her
18 the wording for it. Now, whether she sent it, from where, I
19 don't know that. I do know that I did finally get a copy
20 that was the one that she sent.

21 Q. And so it wouldn't have been enough to tell your
22 funder, she has advised us that she sent a letter to BOFI
23 cancelling the contract; you would have wanted to send this
24 to the funder and say, here is a copy of the letter that she
25 says she sent to BOFI cancelling the contract?

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1 A. Right, here is a copy of the letter she actually
2 sent, not one that she intended to send or -- because, if a
3 letter isn't signed, obviously, you're going to infer that it
4 wasn't the one that was sent. So I don't need a copy of
5 something that was not signed in my file because it doesn't
6 mean anything.

7 Q. How do you know this --

8 A. I want a copy of the one that was sent.

9 Q. How do you know this was sent?

10 A. Because Barbara Guerra had that conversation with
11 her while she was at work, and she apparently went home and
12 got us a copy of the one that was sent.

13 Q. Because Ms. Venzant told you she sent this?

14 A. We would have no other way of knowing. Actually, I
15 take that back. We do have a way of knowing because I
16 believe there was also a subsequent letter in February of
17 2014 where BOFI acknowledged receipt of the cancelation and
18 asked for return of the advances.

19 Q. I know what letter you're talking about. How do
20 you know that that correspondence was referring to this
21 letter, as opposed to some other communication from
22 Ms. Venzant?

23 A. I don't.

24 Q. Okay. I believe you testified earlier that -- so I
25 just want to clarify something here -- I think you testified

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1 earlier that the UCC reports were provided to SCS in 2013 as
2 part of the closing binder, correct?

3 A. There are lien and judgment searches, which do
4 include UCC searches.

5 Q. That was my question. So the UCC searches aren't
6 specifically referenced in this list on page 6 of Exhibit 3,
7 but they would have been included in the lien and judgment
8 searches?

9 A. Correct.

10 Q. Okay. So, when Scott Miller asked on March 13,
11 2014, was there a UCC search done, the answer was really,
12 yes, and we gave it to you a year ago?

13 A. I mean, those are facts, what you're stating, but,
14 no, my answer was, yes, they attempted to do a deal, but were
15 unable to secure court approval, and then she came to us to
16 complete a transaction. She advised that she intended to
17 send a formal cancelation letter. I will secure a copy of
18 said letter if you would like.

19 Q. Why didn't you respond to Mr. Miller's e-mail that
20 the UCC searches had previously been provided?

21 A. I can't speculate as to why I did something two
22 years ago.

23 Q. Looking at Exhibit 4, again, this is the
24 handwritten letter?

25 A. Yes.

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1 Q. Nobody at Advance Funding drafted this, did they?

2 A. No. If you look at the date, we hadn't had contact
3 with her at this time.

4 Q. Right. I mean, I could copy this out today and put
5 that date on it, right? I mean, nobody at Advance Funding
6 drafted this, right?

7 A. That would be very fraudulent sir. No, nobody at
8 Advance Funding drafted that.

9 Q. Would you agree that the deal that Advance Funding
10 offered Ms. Venzant wasn't as favorable as the deal that BOFI
11 had offered her?

12 A. I would not.

13 Q. Why?

14 A. I don't believe it was the same transaction.

15 Q. Right, it wasn't the same transaction. Was it more
16 or less favorable than the deal that BOFI had offered?

17 A. I don't really deal with numbers. That's not
18 something that I would even look at.

19 Q. Other than transmitting the UCC searches to SCS,
20 did Advance Funding advise SCS that Ms. Venzant had
21 previously -- let's start over. Other than transmitting the
22 UCC searches to SCS in the spring of 2013, at that time, did
23 Advance Funding advise SCS that Ms. Venzant had previously
24 entered into an assignment agreement with BOFI?

25 A. That's not a typical conversation. Basically,

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1 after we strike a transaction deal with a funder, there's no
2 further conversation, other than, do you have a court date,
3 did it get approved, and then we send the binder.

4 Q. So no is the answer, correct?

5 A. I believe that's the answer, yes.

6 MR. MANVILLE: Let's mark this five.

7 (Exhibit 5 marked for
8 identification.)

9 Q. Ms. Ray, handing you Exhibit 5, this is another
10 e-mail string that's long, in terms of amount of time that it
11 covers, starting on July 2, 2013, and ending on March 12,
12 2014. Its a string between you and Ms. Schwartz and the
13 Millers and so forth; is that correct?

14 A. Correct.

15 Q. Now, in Mr. Miller's e-mail, the last e-mail in the
16 string, March 12, 2014, he says -- he asks if Advance Funding
17 did a UCC search, and he says, "It is my understanding,
18 having been in this business for 20-plus years, that, if
19 there was a UCC filed, Advance would have seen that there was
20 a lien and would have settled that issue before selling that
21 file to the Tovey trust or before advising SCS that the file
22 was clean." Do you disagree with that statement, that that's
23 what Advance Funding should have done?

24 A. No, that's not what Advance Funding should have
25 done. I think you're taking it out of context. And there's

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1 a later e-mail that addresses this specific thing from Amy
2 Schwartz.

3 Q. What do you think he's saying here?

4 A. I'm not saying he's saying anything. You just
5 said, do I agree with this statement?

6 Q. You don't agree with this statement?

7 A. No. A UCC is not lien.

8 Q. Well, I don't see -- he didn't say, and I didn't
9 suggest that a UCC -- oh, I see, that there was a lien. But
10 what about -- what I'm really asking about is his statement
11 that you would have settled the issue before selling the file
12 to the trust or advising SCS that the file was clean.

13 A. If there was a lien, yes, we would have settled it.

14 Q. But your view is, if there's no lien, then you
15 have, not only no obligation to contact BOFI, but, as you put
16 it, contacting BOFI would invite poaching, in your view?

17 A. No, my opinion is there was no issue, there was no
18 reason to contact BOFI. There was no lien.

19 Q. And the response that you're referring to that came
20 later from you and Ms. Schwartz, that was a response to
21 Mr. Miller's view that a UCC filing in this instance
22 constituted a lien that needed to have been resolved? You
23 responded and said it's not a lien?

24 A. I responded and Amy Schwartz, both, responded,
25 legal counsel, responded to him, directly on point.

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1 Q. And what was his response to that message, a UCC
2 filing is not a lien in this instance? Did he accept that?

3 A. I would have to look at his e-mail again. I would
4 assume he did, from his legal counsel's e-mail, yeah. It was
5 pretty strong language.

6 Q. How frequently does Advance Funding enter into a
7 deal with a lottery winner where another factoring company
8 had previously entered into a deal with that winner regarding
9 the same lottery installment payments?

10 A. It's common both ways.

11 Q. What do you mean by that?

12 A. Advance Funding will enter into contracts with an
13 annuitant or a winner who had either previously entered into
14 a contract with another factoring company and for whatever
15 reason isn't pursuing that contract anymore. And the same
16 happens to us, we'll have a signed contract, and we'll lose
17 that winner to someone else. Until you get a court order,
18 you really have nothing.

19 Q. Does Advance Funding ever advise its investors when
20 it enters into a lottery assignment agreement with a lottery
21 winner that had previously entered into an agreement with
22 another factoring company?

23 A. No.

24 Q. You don't bring that to the attention of your
25 investors?

1 A. There's no need.

2 Q. Was SCS made the beneficiary under Ms. Venzant's
3 life insurance policy?

4 A. I believe the contract -- excuse me -- the
5 insurance documents that I reviewed today did indicate that
6 SCS was the new owner and beneficiary of that policy.

7 Q. Why was that done?

8 A. Apparently, they protect the wealth of these
9 individuals that they manage the wealth of, and that made
10 financial sense to them. I can't speculate as to why SCS
11 chose to do that.

12 Q. That was part of the deal I assume, that Advance
13 Funding, I guess, didn't care about one way or the other?

14 A. I don't understand your question.

15 Q. Well, if I remember correctly, I believe it was SCS
16 that asked to be made the beneficiary under the policy; is
17 that right?

18 A. Generally, I will ask the funder, or in this case
19 broker, who is going to be the owner and beneficiary of the
20 policy.

21 Q. Right. As far as Advance Funding is concerned, you
22 have no skin in that game, it just needs to get assigned to
23 whoever it's going to get assigned to?

24 A. We ask the funder's representative who they wanted
25 the policy in. So I'm not sure what you mean by that. I

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1 mean, obviously, we're not a benefit -- we don't benefit from
2 that policy.

3 Q. Right. I'm not suggesting that.

4 A. So that's a general question we ask always. I
5 don't know --

6 Q. And then you'll generally do what the funder asks?

7 A. We didn't do anything. Sheena Venzant requested
8 these documents from her insurance company, and then we sent
9 them to the funder's representative to fill in. We didn't
10 submit it, we didn't do anything.

11 Q. Your confirming e-mail -- this is Exhibit 2 -- your
12 confirming e-mail to Richard Miller said, "The \$1 million
13 life policy will be A rated or better and will be owned by
14 SCS." So did Advance Funding have some role in transferring
15 the policy to SCS?

16 A. Other than providing the forms, no. This
17 speculates a policy that we were going to have her secure.
18 We were unaware at the time that she had already secured a
19 policy.

20 Q. I see. Okay. And then you learned later that she
21 had already secured a policy?

22 A. Yes, because, obviously, if I say it will be
23 A rated or better, obviously I don't have a policy already.

24 Q. Is it Advance Funding's position that
25 Mr. Bar-Adon's conversation with Mr. Miller in March 2014,

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1 that that conversation, in and of itself, impaired Advance
2 Funding's business relationship with SCS or Tovey?

3 A. It certainly was the initiation of such.

4 Q. I understand that, but did that conversation, in
5 and of itself, have a material impact on the business
6 relationship between Advance Funding and Tovey, let's say?

7 A. Well, there is no relationship between Advance
8 Funding and Tovey. There's only a relationship between
9 Advance Funding and SCS, and I believe it was very damaging.

10 Q. Okay. So your testimony today is that, to your
11 knowledge, the phone conversation that Mr. Bar-Adon and
12 Mr. Miller had on March 18, 2014, that conversation damaged
13 the business relationship between SCS and Tovey?

14 MS. FOX: Between SCS and Tovey?

15 A. Between SCS and Tovey?

16 Q. Yes. That's what you just said.

17 MS. FOX: No. Misstates the testimony.

18 A. No, I said between Advance and SCS.

19 Q. Okay. Well, if the answer is no, then -- or if you
20 don't know --

21 A. But you've asked the question two different ways.

22 Q. Well, let me ask it again.

23 A. Okay, please.

24 Q. Is it your view that the conversation that
25 Mr. Bar-Adon had with Mr. Miller on March 18, 2014, damaged

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1 the business relationship between SCS and Tovey?

2 A. I know for a fact it did because I received e-mails
3 in that regard, yes.

4 Q. That conversation damaged the business relationship
5 between SCS and Tovey. In what way?

6 A. That conversation damaged the business relationship
7 between them and Tovey because they had bought files from us
8 that Eshel was saying were -- what was it he said we had
9 done? I can't recall exactly, but it was basically that we
10 had done bad documents, bad files, that we're stealing their
11 deals, that we didn't have a right to those payments. So,
12 basically, that alarmed them that they had purchased for
13 their investor a deal that supposedly we had no contract
14 rights in and were now subject to attack by some other
15 entity. So it brought fear to them. Then -- and I believe I
16 testified that that was the initiation of such, and then,
17 obviously, the lawsuit was the nail in the coffin.

18 Q. Do you know if Mr. Miller has ever spoken to
19 Mr. Tovey about his conversation with Mr. Bar-Adon?

20 A. I do not.

21 Q. So how do you know that the conversation affected
22 their business relationship, if you don't even know if
23 they've talked about the conversation?

24 A. I can only assume they have, but, besides that, I
25 can -- you asked me if that was my belief, and I said yes.

1 Q. All right. Fair enough. Do you have any
2 evidence -- other than your belief, do you have any evidence
3 that the conversation between Mr. Bar-Adon and Mr. Miller
4 damaged the relationship between SCS and Tovey?

5 A. The only evidence I have would be their asking me
6 to immediately buy back the file.

7 Q. Which occurred after the lawsuit was filed,
8 correct?

9 A. I believe it was before we knew about the lawsuit.

10 Q. Before?

11 A. It may have been filed, but we didn't have notice
12 of it for some period of time.

13 Q. Do you know -- right now I'm looking at a March 12,
14 2014, e-mail from Mr. Miller to Ms. Schwartz with a copy to
15 you. This is Exhibit 5, where Mr. Miller states that he
16 expects the file to be repurchased from the Tovey trust or
17 for Advance to reach an immediate resolution with BOFI. So
18 do you know if this e-mail was sent before or after
19 Mr. Miller talked to Mr. Bar-Adon?

20 A. This was after Mr. Miller had talked to
21 Mr. Bar-Adon.

22 Q. Do you know when Mr. Miller and Mr. Bar-Adon spoke
23 for the first time?

24 A. I don't know the date of that, no.

25 Q. So how do you know this was after they talked?

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1 A. Because there would have been no issues. There's
2 no independent bringing up of anything after a deal closes.

3 Q. Do you know if Mr. Miller's request that Advance
4 Funding repurchase the file was based on a request that
5 Mr. Miller had received from Mr. Tovey?

6 A. I think I answered that. I have no way of knowing
7 that.

8 Q. You don't know. I mean, it could have just been
9 Mr. Miller trying to protect his investor, correct?

10 A. It could be any -- I can't speculate as to why he
11 would ask that.

12 Q. All right. And you have no knowledge -- as of the
13 date that he sent this e-mail on March 12, 2014, you don't
14 know whether Mr. Miller had spoken with Mr. Tovey about this
15 issue at all, correct?

16 A. I do not know for sure. I can only assume.

17 Q. So other than -- I asked you earlier if you had any
18 evidence that Mr. Bar-Adon's conversation with Mr. Miller had
19 damaged the business relationship between SCS and Tovey, and
20 you pointed me to this request that Advance Funding
21 repurchase the file, correct? Do you have any other evidence
22 that that conversation damaged the business relationship?

23 A. That that one conversation specifically? I have no
24 absolute evidence. I can certainly ask. I believe there's
25 another party that you could be asking that question to.

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1 That's not me.

2 Q. Right. Well, I'm asking you because Advance
3 Funding has made certain allegations relating to that
4 communication and the impacts of that communication on its
5 relationship with SCS and on SCS's relationship with Tovey.
6 And now I'm asking you for the basis for these allegations
7 that Advance Funding has made in this lawsuit. That's why
8 I'm asking you these questions.

9 A. Okay, I understand.

10 Q. Yeah.

11 A. To me, in my conversations with Scott Miller, it's
12 very clear that, not Scott, but Rick III, may have had a
13 conversation with Mr. Tovey and probably did.

14 Q. Do you know when he spoke with Mr. Tovey about
15 this?

16 A. I don't know specifics. I spoke with Scott. I did
17 not speak with Rick. Rick apparently is the person who
18 handles Mr. Tovey specifically.

19 Q. Do you know if Mr. -- if Rick Miller spoke with
20 Mr. Tovey specifically about the conversation that Scott
21 Miller had had with Mr. Bar-Adon?

22 A. I believe there have been inferences in
23 conversations that lead me to believe that, yes. Is there a
24 paper? Do I have evidence? No. Other than conversations.

25 Q. Give me an examples of an inference in a

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1 conversation that would lead you to conclude that Rick Miller
2 had talked to Mr. Tovey about Mr. Bar-Adon's conversation
3 with Scott Miller.

4 A. The fact that he would ask me to buy back the file.

5 Q. Right, but we've just talked about that, and you've
6 told me that that request could be simply Scott Miller's
7 request independent of any communications with Mr. Tovey. So
8 what else do you have?

9 A. It could be him wanting me to buy back the file
10 because he wants to buy it. I can't speculate, but I can
11 assume. It happened in proximity to all this conversation,
12 so it's a logical conclusion.

13 Q. Did Mr. Bar-Adon's conversation with Mr. Miller in
14 March 2014, did that conversation, in and of itself, damage
15 the business relationship between Advance Funding and SCS?

16 A. Yes.

17 Q. How?

18 A. They didn't buy lottery files from us any further.

19 Q. From that date forward?

20 A. Other than those that they had already committed
21 to. There was actually several e-mails where they said they
22 wouldn't buy anything.

23 Q. And were those e-mails sent before or after the
24 filing of the lawsuit?

25 A. Well, I think -- you keep using the filing of a

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1 lawsuit as a date. We weren't aware of it. They waited I
2 think over three months to even try and serve the lawsuit.
3 So for you to use the date of the lawsuit, that's not
4 relative for me.

5 Q. Okay. Fair enough. Were those communications, to
6 your knowledge, where Mr. Miller indicated, Scott Miller
7 indicated, that he SCS wouldn't buy any more deals from
8 Advance Funding, did those communications occur before or
9 after Advance Funding and SCS had notice of the lawsuit?

10 A. It started with the conversation, and there were --
11 there was definitely decline in the deals, that they would
12 even bid on, much less take. So, to me, it clearly affected
13 their decision.

14 Q. Was it the conversation that affected their
15 decision, or was it the possibility of litigation that
16 affected their decision? Do you know one way or the other?

17 A. Well, initially, it was probably the possibility of
18 litigation, because that's what he threatened in the
19 conversation. So the conversation and the threat of
20 litigation are one and the same. So, yes, if I understand
21 your question correctly.

22 THE VIDEOGRAPHER: Counsel, just to let you
23 know, there's about ten minutes left on this disc.

24 MR. MANVILLE: Okay. Why don't we take a
25 break.

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1 THE VIDEOGRAPHER: We are going off the
2 record. The time is 12:42.

3 (The noon recess was taken
4 at 12:42 p.m.)
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1 SEATTLE, WASHINGTON; TUESDAY, SEPTEMBER 22, 2015

2 1:42 P.M.

3 --oOo--

4 THE VIDEOGRAPHER: This is the beginning of
5 Disc No. 3. The time is 1:42, and we're going on the record.

6

7 E X A M I N A T I O N C O N T I N U E D

8 BY MR. MANVILLE:

9 Q. Ms. Ray, following up on two things, when Advance
10 Funding enters into an assignment agreement with a lottery
11 winner, before the agreement is approved by the court, does
12 Advance Funding typically file a UCC statement?

13 A. Not any longer.

14 Q. You used to?

15 A. They used to.

16 Q. When did you stop doing that?

17 A. They stopped several years ago, I think it's been
18 at least three.

19 Q. Why did Advance Funding stop doing that?

20 A. Because we found our deals were being poached based
21 off of our UCCs.

22 Q. I see. So you file a UCC before the court order.
23 If somebody comes and in and offers the lottery winner a
24 better deal --

25 A. More. It happens very frequently unfortunately.

131:9-25 - Relevance

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1 Q. Does Advance Funding file UCC statements with
2 regard to rights of first refusal?

3 A. Not any longer.

4 Q. The same thing, did you stop a few years ago?

5 A. No UCCs. Yes. All UCCs were stopped at one time.

6 (Exhibit 6 marked for
7 identification.)

8 Q. Ms. Ray, handing you what's been marked Exhibit 6,
9 can you tell me what this is.

10 A. This is a lottery prize assignment agreement
11 between Sheena Venzant and Advance Funding, LLC.

12 Q. Go down to paragraph 3, "Court approval of
13 assignment." Do you see the last sentence in that paragraph?
14 It reads, "Both parties recognize that this agreement is
15 enforceable upon execution, but that the court approval of
16 this agreement is required by the lottery, and such approval
17 is a condition precedent to the payment obligation of either
18 party under this agreement." Do you see that?

19 A. Yes.

20 Q. But your testimony today is that an agreement like
21 this assignment agreement is not enforceable upon execution,
22 correct?

23 A. I said that they don't have valid, legal contract
24 rights.

25 Q. What's the difference between not having valid,

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1 legal contract rights and not being enforceable?

2 A. I'm not exactly sure.

3 Q. Well, you just drew a distinction; what do you
4 think the distinction is?

5 A. I think this sentence is meant to say that they
6 want an acknowledgment letter from the lottery before they'll
7 fund.

8 Q. The sentence, "Both parties recognize that this
9 agreement is enforceable upon execution," that's what that
10 means?

11 A. No, the rest of that sentence.

12 Q. What does the first part of the sentence mean,
13 "Both parties recognize that this agreement is enforceable
14 upon execution"?

15 A. I have no knowledge. I did not draft this
16 agreement.

17 Q. Your testimony is that this agreement is, in fact,
18 not enforceable upon execution until it's approved by the
19 court, correct?

20 A. No, that's not my testimony. My testimony is that
21 no entity has legal contract rights until approval by the
22 court. That was my testimony.

23 Q. And you see a distinction between those two things,
24 having legal contract rights and having an enforceable
25 contract? Those for you are two different things?

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1 A. I would imagine, depending on what you're trying to
2 enforce. If you're trying to enforce a contract rate, then,
3 yes, that's not. If you're trying to enforce their
4 obligation to continue to cooperate, yes, I think that is.

5 Q. So some aspects of this agreement you would agree
6 are enforceable immediately upon execution, like the
7 obligation to cooperate, for instance?

8 A. I would think that that would be definitely
9 enforceable, but that's contract rights. That has nothing to
10 do with the rights of the lottery prize payments.

11 Q. Are there any other contract rights embodied in
12 this document that you would say are enforceable immediately
13 upon execution prior to the entry of a court order?

14 A. Contract rights? I mean, considering this is a
15 contract, yes. I just don't think that you own the lottery
16 prize payments. You have no rights to the lottery rights
17 payments until you are approved by court order.

18 Q. What I think I understand what you're saying -- and
19 correct me if I'm wrong -- is that, here, the lottery winner
20 doesn't have -- the lottery winner doesn't have a right to
21 the payment, the lump-sum payment, and the factoring company
22 doesn't have a right to the installment payments until the
23 agreement is approved by the court, correct?

24 A. Correct, and we've received an acknowledgment
25 letter.

Page 134, lines 18-25:
Irrelevant, legal conclusion

Page 135

1 Q. And you've received an acknowledgment. But there
2 are aspects of this agreement, this lottery prize assignment
3 agreement, that are enforceable as between the parties prior
4 to entry of a court order, correct?

5 A. I'm not a lawyer; I did not draft this document; I
6 don't know what this means. I'm sorry.

7 Q. You don't know what it means?

8 A. No.

9 Q. You did testify that, in your view, the duty to
10 cooperate would be enforceable immediately, correct?

11 A. It seems like something that's in the contract, so
12 I would say yes.

13 Q. Are there any other duties that you can identify in
14 this contract that would be immediately enforceable?

15 A. Again, I'm not an attorney, so I really can't say.
16 I didn't draft this. I really don't know what the intent of
17 this was.

18 Q. Do you think a right of first refusal is
19 enforceable immediately upon execution of an assignment
20 agreement?

21 A. No.

22 Q. You don't think it is. Does Advance Funding ever
23 file lawsuits based on the right of first refusal prior to
24 entry of a court order?

25 A. I think they've learned that way, yes, I believe

1 they have.

2 Q. So they do, Advance does do that on occasion?

3 A. Has.

4 MS. FOX: Let her answer the question.

5 Q. Has.

6 A. Has.

7 Q. When is the most recent instance?

8 A. I don't recall. That wasn't something I researched
9 for this deposition. I'm sorry.

10 Q. Would you agree that, if a lottery winner enters
11 into an assignment agreement like this one, like Exhibit 6,
12 and signs an affidavit meant to be presented to the court,
13 along with a petition approving the agreement and the lottery
14 winner subsequently decides that she's made a bad deal, that
15 she could go into court and she could tell the court that she
16 disavows the affidavit that she signed?

17 A. Absolutely. Until a deal is consummated through a
18 court order, a lottery winner can do anything they'd like,
19 and they do.

20 Q. Why didn't you contact -- why didn't Advance
21 Funding contact BOFI after it obtained the court order, but
22 before it funded the deal, the Venzant deal?

23 A. There was no reason to contact BOFI.

24 Q. When did you learn that Ms. Venzant already had an
25 insurance policy in place?

Page 136, lines 10-19: Irrelevant,
legal conclusion

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1 A. At some point during the transaction, we had
2 attempted to have her get a policy. That was denied, and she
3 said to Barbara, "I have a policy already." So we were
4 shocked, but it worked, so --

5 Q. And was that -- do you remember if that was before
6 or after Advance Funding obtained court approval with the
7 Venzant assignment agreement?

8 A. I don't recall exactly.

9 Q. Has Advance Funding ever done any deals where it
10 obtained court approval for a lottery assignment agreement,
11 but then didn't promptly fund the deal?

12 A. Yes.

13 Q. How often does that happen?

14 A. Infrequent, but it has happened.

15 Q. Can you give me some examples of when that's
16 happened?

17 A. Specific names, no, I wouldn't recall, but I can
18 give you some instances that it would happen.

19 Q. Okay.

20 A. As I said, in some instances, with certain funders,
21 our lien and judgment searches have to be certified through a
22 certain date; therefore, we don't even order them until the
23 order has been entered, not because of cost, but because they
24 have to be through the date that the lottery prize payments
25 change ownership. So we'll learn of a tax lien or perhaps

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1 something that wasn't disclosed to us prior, and it has to be
2 satisfied.

3 I have a New York lottery winner, as a matter of
4 fact Tovey had originally agreed to be the funders, and
5 there's a tax lien that's larger than the purchase price.
6 Clearly, we can't do that, so we're in negotiations with --
7 it's not a federal tax lien, it's a state tax lien. We've
8 been in negotiations with the DTF to get that lowered so that
9 we could actually consummate the transaction, because, until
10 then, we're underwater, and it doesn't make sense for us to
11 pay.

12 Q. Is that one of the deals that's referenced in one
13 of the charts that were produced in discovery?

14 A. I believe it probably is.

15 Q. Do you know which chart it would be on?

16 A. It should be on both because the charts are SCS and
17 then those from SCS that are Tovey. I'm next to positive it
18 was a Tovey transaction.

19 Q. I'll just hand you that for now. Is it one of
20 those?

21 A. Aren't these deals that have closed? If it hasn't
22 closed, it won't be on this. If you want to show me the one
23 that's lost profit, it might be on there. I'm sorry, I'm not
24 trying to -- is this supposed to be marked?

25 Q. No.

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1 A. I can look at it?

2 Q. Yeah. We'll mark it later.

3 A. It does not appear to be on here, likely because it
4 hasn't closed.

5 Q. Why didn't Advance Funding provide funding in the
6 Marge Brian matter in New York?

7 A. Why did Advance Funding not provide --

8 Q. Why was Advance Funding unable to fund that deal?

9 A. We are actually getting ready to fund that deal.

10 Q. When was the order entered in that case?

11 A. Oh, it hasn't.

12 Q. There hasn't been any order entered?

13 A. Not yet, no. The parties have settled.

14 Q. When did Advance Funding originally enter into an
15 assignment agreement with the lottery winner in that case?

16 A. Without seeing the documents, I couldn't answer
17 that question.

18 Q. Months ago? Years ago?

19 A. I believe that's years ago.

20 Q. And did Advance Funding get a court order approving
21 the assignment a couple years ago?

22 A. I don't think it had a funder. We weren't able to
23 secure funding.

24 Q. Did you get a court order?

25 A. You can't get a court order until you have a

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1 funder. You file the petition when you get the assignee
2 information.

3 Q. All right. So the answer is, no, there was no
4 court order obtained two years ago?

5 A. Right. We had no one to sell it to.

6 Q. You mentioned the WMS matter earlier?

7 A. Yes.

8 Q. Was Advance Funding unable to fund that
9 transaction?

10 A. That's not a transaction. WMS is a funder.

11 Q. Right. Was there a specific transaction relating
12 to a particular lottery winner? You mentioned an incident
13 where Mr. Bar-Adon supposedly called somebody at WMS and
14 spoke to them about Advance Funding, correct?

15 A. Right.

16 Q. That was a matter relating to a specific lottery
17 winner?

18 A. I believe I said I could definitely look into that.
19 I did not research that for these topics.

20 Q. Okay, you don't know, okay.

21 A. But I would definitely be willing to testify in the
22 future on that. I do know that we no longer use WMS as a
23 funder as a result of that.

24 Q. What's the legal significance of a cancelation
25 letter, like the one that Ms. Venzant says she sent to BOFI,

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1 in a state where a lottery winner can cancel an assignment
2 agreement at will whenever they want?

3 MS. FOX: Object to the form of the question;
4 calls for a legal opinion.

5 A. I am not a lawyer. I would assume, if there is no
6 restriction on the time limit that you have to cancel, you
7 can cancel at any time.

8 Q. So why was it -- just to clarify, this letter that
9 you obtained from Ms. Venzant --

10 A. Yes.

11 Q. -- you needed to obtain this solely because your
12 funder wanted it, correct?

13 A. No, actually, I wanted it. I wanted to have a copy
14 of it.

15 Q. Right.

16 A. I send my files off, and they're very clean. I
17 want a clean file. That's all.

18 Q. Why did you need a copy of this letter? If your
19 testimony is that she could essentially walk into court
20 anytime and say, I don't want to do that transaction anymore,
21 why would you need this?

22 A. I only specifically asked for that copy when it
23 became an issue raised by Amy Schwartz. She wanted a copy
24 for her file.

25 Q. Okay. That was my question. That's why you

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1 obtained this copy from Ms. Venzant?

2 A. That's why I obtained that copy from sales.

3 Q. From sales, okay. I'm going to pick up the thread
4 of the conversation that we were having before lunch. Do you
5 know when Advance Funding was served with BOFI's lawsuit in
6 this matter?

7 A. I believe it was in late July.

8 Q. Of 2014?

9 A. Correct.

10 Q. If BOFI had not filed its lawsuit, do you know if
11 Tovey would be funding Advance Funding transactions right
12 now?

13 A. I don't think that he would.

14 Q. What's your basis for saying that?

15 A. Because, between the time that the conversation was
16 held and the time that the lawsuit was actually served, there
17 were no further transactions committed to by Tovey.

18 Q. But do you know that that would have continued if
19 the lawsuit hadn't been filed?

20 A. I believe the lawsuit was a continuation of what
21 started with a phone call. If you're trying to separate the
22 two instances, the lawsuit definitely would have been enough.

23 Q. But you've never had a conversation with Mr. Tovey,
24 correct?

25 A. Correct.

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1 Q. So you don't if, if BOFI had never filed suit, if
2 that phone call between Mr. Bar-Adon and Mr. Miller would
3 have just blown over? I mean, you've never asked Mr. Tovey
4 that, correct?

5 A. I have no contact with Mr. Tovey.

6 Q. Right. So you don't know one way or the other.
7 That may have just kind of fizzled out; he may have continued
8 to refuse to fund deals? Do you know one way or the other
9 what would have happened if BOFI hadn't filed suit?

10 A. He could have also offered us a \$9 million line.
11 There's nothing that you can say, other than the fact that he
12 stopped buying deals from us. It was pretty clear to us that
13 he wasn't going to buy deals.

14 Q. And the same question with regard to SCS. If
15 BOFI -- if Mr. Miller had had his communication with
16 Mr. Bar-Adon on the phone, but BOFI had not filed the lawsuit
17 after that, would you -- would Advance Funding continue to
18 experience disruption in its business relationship with SCS
19 today or not? Do you know one way or the other?

20 A. I believe it's clear from the history, yes. From
21 the period that the phone conversation to the period that
22 they filed suit, there were no new deals given to us.

23 Q. But, again, would that have continued for the next
24 14 months, or would that have just blown over; do you know?

25 A. I don't know that I would know that. I do know

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1 Mr. Miller, Rick Miller III, indicated that he would try and
2 talk to Tovey once this was done.

3 Q. The lawsuit was done?

4 A. The whole issue, yes.

5 MR. MANVILLE: Let's take a one-minute break.

6 THE VIDEOGRAPHER: We are going off the record
7 the time is 2:02 p.m.

8 (A brief recess was taken.)

9 THE VIDEOGRAPHER: We are back on the record.
10 The time is 2:04 p.m.

11 Q. Did BOFI's pre-suit communications with SCS result
12 in SCS not doing any particular deal with Advance Funding
13 that it otherwise would have done?

14 A. It stopped all deals.

15 Q. Right. Can you identify a deal that it would have
16 done if Mr. Bar-Adon -- that SCS would have done if
17 Mr. Bar-Adon had not spoken to Mr. Miller?

18 A. I think, if you look at the lost profit
19 spreadsheet, it identifies all the lottery deals. I sent
20 those to the Millers and asked them, if these were given to
21 you at the dates appropriate, would you have bid on them, and
22 he gave me bids. So I would assume that means he would have
23 bought them. Yes, sir.

24 MR. MANVILLE: Let's make this No. 7. I don't
25 want to keep coming back to it without marking it.

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1 (Exhibit 7 marked for
2 identification.)

3 Q. Ms. Ray, tell me what Exhibit 7 is.

4 A. This is a spreadsheet that I originally sent to
5 Mr. Millers, Messrs. Miller, and indicated these are the
6 lottery deals that we either submitted to you and you
7 declined because of the Tovey lawsuit or that we just stopped
8 submitting to you because you obviously weren't going to bid.
9 Can you please tell me, if these were presented applicable to
10 the date of the contract, would you have bid on them, and
11 what would your rate have been? And he provided me with
12 those rates, and then I did the calculation of lost profit.

13 Q. When did you provide this spreadsheet to the
14 Millers?

15 A. Last week.

16 Q. When did they get back to you?

17 A. Literally, the next day, I believe.

18 Q. So last week you sent this to them on what day?

19 A. I don't recall exactly what day, but it was
20 definitely last week.

21 Q. Which of the transactions listed in Exhibit 7 are
22 transactions that Advance Funding submitted to SCS and SCS
23 declined to fund?

24 A. I can't state with specificity which ones. At some
25 point, as I said, we just stopped submitting them because

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1 they weren't -- they were not giving us bids and made it very
2 clear that, until this went away, they weren't going to.

3 Q. So can you identify in Exhibit 7 which transactions
4 you didn't submit to SCS because you assumed they wouldn't
5 fund it?

6 A. I can't state with any specificity which ones I
7 stopped and what point I stopped, but definitely after
8 several were responded to that they would not or they didn't
9 respond at all.

10 Q. So after -- so what am I looking at, K date?

11 A. K date, that's the contract date.

12 Q. Contract date. So, if I'm looking at the dates
13 indicated in K date, at some point -- and I'm looking at them
14 chronologically -- at some point you went from submitting
15 proposed deals to them to not even including them on your
16 e-mails?

17 A. Correct.

18 Q. And you don't know when that was?

19 A. I don't know exactly, no, sir.

20 Q. Do you remember if it was this year or last year?

21 A. I don't recall when that exactly happened. It was
22 after I received at least two to three e-mails stating that
23 they just weren't going to buy any lottery deals.

24 Q. Can you identify any deal on Exhibit 7 that SCS
25 didn't do because of Advance Funding's pre-suit

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1 communications with SCS?

2 A. If you're trying to differentiate one to the other,
3 I can't say specifically which ones their reasoning would
4 have been that, but I can pretty much say that none of them,
5 because, from the point of the conversation even through the
6 point and to the point of the lawsuit, they weren't buying
7 anything. So, if all of these were presented to them within
8 that period of time, they wouldn't have bought them; if all
9 of these were presented after that period of time, they
10 wouldn't have bought them.

11 Q. Well, okay. Out of curiosity, let's look at our
12 sample size. So, between Mr. Bar-Adon's telephone
13 conversation with Mr. Miller and service of the lawsuit, of
14 the Complaint, in late July, we're talking about mid-March to
15 late July, that is how many deals? I see one, two, three.
16 So three deals you presented to SCS, and SCS declined to bid
17 on those?

18 A. Correct. Keep in mind, sometimes the bids are sent
19 prior to actual contract because they are fairly certain that
20 it's going to come in, and they want me to shop it to make
21 sure that we can even sign the contract, because, if we can't
22 get interest -- depending on the parameters of the deal, we
23 pre-shop. So I can't specifically say it was only three, but
24 I know it was at least three.

25 Q. Well, how many more could it have been?

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1 A. Well, there's one that's dated in 2012; there's one
2 that's dated in 2010. So, clearly, those dates don't mean
3 anything to you, but they do to us. So basically that means
4 Advance owns those payments, and they were trying to sell
5 them, so -- and we did.

6 Q. And do you know, for the deal with a contract date
7 of October 11, 2012, when you shopped that to your funders?

8 A. I can't state with specificity, no.

9 Q. You don't know if it was in that window from
10 mid-March to the end of July 2014?

11 A. No, but all of these were on the current tab, so
12 they are definitely deals that were done in that time frame,
13 beyond that time frame. These are obviously deals that went
14 well past when the actual lawsuit was filed, but these are
15 deals that would have been presented from the point that they
16 no longer -- that they did business with us to now.

17 Q. Right. I understand that.

18 A. All right.

19 Q. Yeah.

20 A. For more specifics beyond that, I can't tell.

21 Q. Unless those deals with dates earlier than
22 March 2014 happened to have been shopped to SCS between
23 mid-March and the end of July 2014, the three deals we're
24 talking about here that, presumably, based on the dates, were
25 shopped to SCS during that window are the DAM deal, the TS

1 deal, and the WFR deal, correct?

2 A. That's an assumption you're making, sir. I can't
3 make that assumption.

4 Q. Well, I am asking you.

5 A. I'm telling you, I cannot make that assumption.
6 Basically, I can tell you is sometimes we pre-shop a deal.
7 So just because the date of the contract falls outside of the
8 date that you're asking me about doesn't mean that it wasn't
9 pre-shopped. I have no way to determine that.

10 Q. So, for example, so we understand each other, so HA
11 with a contract date of 8/29/14 could have been pre-shopped
12 in July 2014?

13 A. Absolutely.

14 Q. But you just know, for any of these deals, when --
15 and, for that matter, a contract with a date 7/1/2014 could
16 have been pre-shopped a few months before that?

17 A. It could have been, yes.

18 Q. So you don't know which of these deals were
19 actually shopped to SCS between mid-March and the end of
20 July 2014?

21 A. With specificity, no.

22 Q. I mean, at all. I'm not asking for specificity. I
23 mean, you don't know which of these deals were shopped to SCS
24 during that window, correct?

25 A. No, sir.

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1 Q. Do you know how many deals you shopped to SCS
2 during that window?

3 A. I think I answered, at least three times I was
4 declined, at least three.

5 Q. At least three, okay.

6 A. Yes.

7 Q. Was that unusual? What percentage of deals did SCS
8 previously bid on?

9 A. A large portion of our lottery. As I said, that
10 was apparently what Mr. Tovey was most interested in at the
11 time, until this lawsuit.

12 Q. Right. But that wasn't really exactly my question.
13 So what percentage of deals that you would send out to your
14 funders would, before mid-March 2014, did SCS typically bid
15 on? Did they bid on everything?

16 A. For the most part, yes.

17 Q. Every single deal that you put out there, SCS bid
18 on?

19 A. For the most part. There were some that were too
20 far in advance, what have you, but they had an extreme
21 appetite for lottery.

22 Q. So about 20 deals a year is your testimony?

23 A. I think I said 22, but, yes.

24 Q. Yeah, something like that. And were they
25 frequently outbid by other investors, or, if they bid on a

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1 deal, did they usually get it?

2 A. I don't know if I can answer that question.

3 Without seeing the specifics of everyone's bids and trying to
4 remind myself of each and every transaction we did, that
5 would be almost impossible for me to answer.

6 Q. Okay. But going back historically then for the
7 period -- when's the first deal that Advance did with SCS?

8 A. I believe 2011.

9 Q. So, from the period 2011 through March 2014, I
10 should expect to see in Advance Funding's records something
11 like 20 lottery deals a year funded by SCS, correct?

12 A. No.

13 Q. Why not?

14 A. Because 2011 was the first year of Advance's
15 existence. So I don't think they had attained quite the
16 comfort level.

17 Q. When did they attain that comfort level?

18 A. You would have to ask them.

19 Q. Do you recall -- I don't want to put you -- this
20 isn't a trick question. Let's find some records, because
21 you've given them to us.

22 MR. MANVILLE: Let's mark this is eight.

23 (Exhibit 8 marked for
24 identification.)

25 Q. Handing you Exhibit 8, can you tell us what this

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1 is.

2 A. This appears to be Tovey deals.

3 Q. Is it just Tovey deals?

4 A. Without any identifying tab, I can't say for sure,
5 but this looks like -- I recognize a lot of these as being
6 Tovey deals. Yes. At the very least, it's at least SCS
7 deals, but I believe most of these are Tovey deals.

8 Q. Are these only Tovey deals?

9 A. I think I just answered.

10 MR. MANVILLE: Let's take a break for a
11 second. I'm going to get the discovery responses that go
12 with this.

13 THE VIDEOGRAPHER: We are going off record.
14 The time is 2:17.

15 (A brief recess was taken.)

16 THE VIDEOGRAPHER: We are back on record. The
17 time is 2:19.

18 MR. MANVILLE: Just trying to keep you awake
19 over there.

20 Let's mark this as nine.

21 (Exhibits 9-10 marked for
22 identification.)

23 Q. Now, if you take a look at Exhibit 8, I will tell
24 you that Advance Funding stated in its supplemental answer to
25 Interrogatory No. 17 that this is a chart showing the SCS

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1 transactions with the rate and the profit earned by AF on
2 each transaction. And, if you could compare that to
3 Exhibits 9 and 10 and then tell me what we're looking at with
4 eight. Is eight just Tovey transactions through SCS, or is
5 eight all SCS transactions with Advance Funding?

6 A. Eight is all SCS transactions.

7 Q. Okay. So, if I'm looking at this spreadsheet,
8 Exhibit 8, I see one transaction from 2011. This is the one
9 you referenced. This is the first transaction that Advance
10 Funding did through SCS, correct? It's the Shea transaction?

11 A. According to the date, it would be.

12 Q. And then I see one, two, three, four, five, six,
13 seven, eight transactions for 2012, correct?

14 A. One, two, three, four, five, six, seven, eight,
15 eight with a contract date of 2012.

16 Q. All right. And then I see one, two, three, four,
17 five, six with a contract date in 2013, correct?

18 A. One, two, three, four, five, six with a contract
19 date of 2013.

20 Q. All right. So, if I'm following you and Advance
21 Funding is doing about, you said 22 lottery deals a year, and
22 Tovey is funding somewhere -- sorry -- SCS is participating
23 in six to eight of those deals per year, we're talking about
24 somewhere between a quarter and a third of the deals,
25 correct?

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1 A. Well, I think you're using the amount of deals that
2 we're doing now, as opposed to the amount of deals that we
3 did with SCS when Advance Funding was new. So I think you're
4 comparing apples and oranges, but, if you want to say is that
5 a correct percentage math-wise, yes.

6 Q. Okay. So are you telling me now that, today, in
7 this year, in 2015, Advance Funding is on pace to do
8 something like 22 lottery deals?

9 A. I would say yes.

10 Q. And 2014 was similar?

11 A. I would say probably a little bit less, but, yes.

12 Q. And what about 2013?

13 A. A lot less.

14 Q. Okay. Maybe that's the disconnect. How many
15 lottery deals did Advance Funding do in 2013?

16 A. 2013? I don't think I have a spreadsheet that
17 shows all lottery deals in 2013. Based on what I have in
18 front of me, I can count up what you've already done with the
19 2013 and tell you that, but that doesn't necessarily -- I
20 believe these are all SCS deals.

21 Q. Right. And you don't know how many other deals
22 there were?

23 A. Not from memory.

24 Q. The same with 2012, you don't know how many lottery
25 deals there were in total?

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1 A. Three years ago, no.

2 Q. Do you know what percentage of those deals SCS
3 funded in 2012?

4 A. Considering that was their second year in
5 existence, I would imagine a lot of them.

6 Q. How about 2013?

7 A. I wish I could answer you, sir. I can't remember
8 definite details like that. I'm sorry.

9 Q. That's fine. Before March 2014, was there ever an
10 instance where SCS passed on three straight lottery deals?

11 A. Never.

12 Q. Two straight lottery deals?

13 A. It's possible, but I'm not sure what you mean by
14 straight. Are you saying asked in the same e-mail; asked in
15 the same week; in the same month?

16 Q. I don't know. One after the other. I mean, it
17 doesn't matter how much time is between them.

18 A. We don't keep records such as that, but they
19 usually bid on pretty much everything lottery.

20 Q. Okay.

21 A. Whether we ultimately accepted their bid or not is
22 another story.

23 Q. Do you have any sense of what percentage of SCS
24 bids Advance Funding typically accepts?

25 A. I could go off of these spreadsheets and do the

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1 math like you did.

2 Q. If you put a deal out there and SCS bids on it, how
3 often do they get the deal; is it 90 percent of the time;
4 50 percent of the time, roughly?

5 A. I just -- I didn't look at it in a mathematical way
6 like that. I'm sorry.

7 (Exhibit 11 marked for
8 identification.)

9 Q. Ms. Ray, handing you Exhibit 11, is this an e-mail
10 from you to David Bavli dated March 18, 2014?

11 A. Yes.

12 Q. And you sent him this e-mail in response to a phone
13 call that you received from him; is that correct?

14 A. Correct.

15 Q. Did he leave you a voicemail message?

16 A. Yes.

17 Q. Do you remember what he said in the message?

18 A. I do not.

19 Q. Did he ask you to call him back?

20 A. Yes.

21 MR. MANVILLE: What happens here in the
22 afternoon on days like this is that the sunlight bounces off
23 the building across the street.

24 (Exhibit 12 marked for
25 identification.)

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1 Q. Ms. Ray, handing you Exhibit 12, this is another
2 one of these long e-mail strings, including some e-mails that
3 we've previously talked about. The last e-mail in the string
4 is an e-mail from you to Richard Miller copying various
5 folks; is that right?

6 A. Correct.

7 Q. And you state in this e-mail sent on March 19,
8 2014, quote, "Dan did speak with David Bavli last evening.
9 Eshel still has not called us." Does that refresh your
10 recollection that Mr. Cevallos, in fact, did speak with
11 Mr. Bavli?

12 A. It definitely does.

13 Q. Did Mr. Cevallos tell you, when you talked to him
14 in preparation for your deposition, that he hadn't spoken to
15 Mr. Bavli?

16 A. I thought that's what he told me.

17 Q. Going a little further back, there's an e-mail here
18 from Richard Miller on March 18, 2014, sent at 3:49 p.m., and
19 that's to you and, again, copying various other individuals.
20 Do you see that one? It's at the bottom of page 2, going
21 over onto page 3.

22 A. Okay. Yes.

23 Q. And Mr. Miller says, "A wait and see if our client
24 is named in an issue stance makes me uncomfortable. I need
25 you and Dan to help me understand why I should be okay with

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1 this approach, and I would prefer to do it by phone." That's
2 what he told you?

3 A. That's an e-mail that you just read.

4 Q. Did I read it correctly?

5 A. Yes.

6 Q. Did he send you that e-mail?

7 A. Yes.

8 Q. Did you receive it?

9 A. Yes.

10 Q. Did you then -- it looks like you then had a call
11 with Scott Miller about this issue; is that correct?

12 A. Correct.

13 Q. What did you tell Mr. Miller during that call? Was
14 this the call that you referenced where you -- we discussed
15 earlier, where --

16 A. I don't know if it's the specific call, but he
17 definitely called me upset.

18 Q. So do you remember this call?

19 A. This specific call?

20 Q. Mm-hmm.

21 A. I can't say if this was the first, the second, or
22 the third, but I definitely recall my conversations with
23 Scott.

24 Q. Okay. Do you remember if this was the call that
25 you previously had testified about, where you told Mr. Miller

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1 what you had found out and agreed to indemnify SCS and Tovey?

2 A. I don't recall if that's the exact one. Like I
3 said, I had three conversations with them. Whether this was
4 the first, second, or third, I do not know.

5 (Exhibit 13 marked for
6 identification.)

7 Q. Handing you Exhibit 13, this is an e-mail exchange
8 between you and Scott Miller, copying various individuals,
9 correct?

10 A. Correct.

11 Q. And you sent an e-mail to Scott Miller on
12 April 3rd, 2014, stating, "To date, they still have not
13 contacted us, if that tells you anything," correct?

14 A. Correct.

15 Q. Why did you tell him that, when Mr. Bavli had
16 called you and had actually spoken with Mr. Cevallos a couple
17 of weeks earlier?

18 A. We were expecting contact by Eshel.

19 Q. Oh. So, by they here, you meant Eshel, not --

20 A. The person who called the Millers, yes.

21 Q. Was there a reason why you weren't more specific in
22 that e-mail?

23 A. About what?

24 Q. About the fact that you were referring to a single
25 individual when you used the word "they"?

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1 A. I'm not exactly sure. He was copied on the e-mail
2 where he knew that David had spoken with Dan.

3 Q. I understand that.

4 A. So, to me, it was clear, to me. I had multiple
5 conversations with them. We were expecting a call from
6 Eshel.

7 Q. Had you mentioned in those conversations that
8 Mr. Bavli had reached out to you?

9 A. No.

10 Q. So did you ever tell the Millers that Mr. Bavli had
11 had -- well, in that e-mail -- was this in this e-mail?

12 A. David Bavli. Dan did speak with David Bavli last
13 evening.

14 Q. Okay. All right.

15 A. That was March 19th.

16 Q. Right, yeah.

17 A. Fairly early on.

18 Q. Yeah. Do you know why Mr. Bavli was calling you?

19 A. I didn't take his call, so, no.

20 Q. He didn't leave you a substantive message?

21 A. No.

22 Q. Assuming he did talk to Mr. Cevallos, you don't
23 know what they talked about?

24 A. Dan didn't recall that conversation either, so I
25 can't make any assumption based on that.

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1 Q. Were there any other communications between BOFI
2 and Advance Funding before BOFI filed suit?

3 A. Not to my knowledge. If by communications, do you
4 mean correspondence from us to them or contact directly from
5 them to us?

6 Q. Either way. I mean, I know there was a cease and
7 desist letter that went out.

8 A. Okay.

9 Q. Is it Advance Funding's position that BOFI's
10 pre-suit communications with SCS and BOFI's filing of this
11 lawsuit have damaged Advance Funding's business relationship
12 with Northeast Capital?

13 A. No. They're brothers. I don't think there's
14 anything that could damage that.

15 Q. If Advance Funding were to recover damages in this
16 lawsuit, does it have an agreement with SCS to share any
17 portion of those damages with SCS?

18 A. It does not.

19 Q. Does it have such an agreement with Tovey?

20 A. It does not.

21 Q. Let's go back to Exhibits 7 through 10, these
22 charts. So let's talk first about Exhibits 9 and 10. Do you
23 recall when these were prepared?

24 A. These were prepared in response to the
25 interrogatories.

1 Q. Did you participate in preparing these?

2 A. I did.

3 Q. What role did you play in preparing them?

4 A. I created these.

5 Q. Did anybody else help you prepare these, prepare
6 Exhibits 9 and 10?

7 A. No.

8 Q. Did you assemble the information that you
9 incorporated into these spreadsheets?

10 A. With the help of Advance's assistant, yes.

11 Q. Who is Advance's assistant?

12 A. Elyse Edwards. She's now Elyse Mary.

13 Q. Did anyone else assist you in assembling
14 information to include in these spreadsheets?

15 A. I don't believe so, no.

16 Q. Let's talk about Exhibits 7 and 8 now. The same
17 questions, did you -- well, did you prepare Exhibit 8?

18 A. I prepared a spreadsheet which had a header. The
19 header is not on here. So, to the extent that the
20 information is in this, I did.

21 Q. And then I believe you testified earlier that you
22 prepared Exhibit 7 and you transmitted it to SCS so SCS could
23 insert what I gather is in the column "Miller Rate"?

24 A. Correct.

25 Q. But everything else in Exhibit 7 you put together?

1 A. Correct.

2 Q. So let's look at Exhibit 8 again. And I believe
3 you testified that this was -- that this is all -- these are
4 all the transactions that Advance Funding has done through
5 SCS. Now, are those lottery transactions, or are those
6 lottery and structured settlement transactions?

7 A. Just lottery.

8 Q. Just lottery, okay. So, in addition to these,
9 there would have been a number of structured settlement
10 transactions, as well?

11 A. Yes.

12 Q. Do you have any of idea how many structured
13 settlement deals Advance Funding does every year?

14 A. I don't. Advance Funding just opened its
15 structured settlement department in 2014.

16 Q. How many deals did Advance Funding do with SCS in
17 2014 that involved structured settlement payments?

18 A. I didn't research that, sir. I'm sorry.

19 Q. Do you know how the relationship between Advance
20 Funding and SCS came about?

21 A. I do not recall; however, it was definitely before
22 Advance Funding. I don't recall the specifics.

23 Q. I'm sorry, you said it was before Advance Funding?

24 A. Yes, Advance Funding was organized in 2011.

25 Q. So the relationship predated the organization of

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1 Advance Funding?

2 A. My personal relationship, yes.

3 Q. Did SCS previously have a relationship with
4 Northeastern?

5 A. It did.

6 Q. How long had SCS been in that business relationship
7 with Northeastern?

8 A. I focused my concentration on Advance Funding, sir,
9 so I can't answer you. If I had access to my computer, I
10 could definitely look and tell you, but I really don't know.

11 Q. Okay.

12 A. If it helps, Northeastern doesn't initiate, doesn't
13 originate any deals any longer. He's been retired, so
14 basically the only thing we will do is organize funding for
15 different factoring companies.

16 Q. By originate deals, you mean operate as a factoring
17 company, like Advance Funding?

18 A. Correct. It has no salespeople. It does not enter
19 into any contracts with winners or structured settlement.

20 Q. Was that a part of its business for a long time?

21 A. Yes.

22 Q. When did that stop, recently?

23 A. It's been several years that Northeastern hasn't
24 done a transaction, I believe since 2010.

25 Q. 2010, okay. Why did Northeastern get out of the

1 origination business?

2 A. He just didn't want to be as hands-on. He was
3 done, wanted to enjoy his life. He figured that he could
4 still profit from relationships when other factoring
5 companies try to get funding.

6 Q. Why do you consider the identity of Northeastern's
7 funders to be proprietary information?

8 A. Because it's a very cutthroat business, and rates
9 are very important. While one brokering company or factoring
10 company might use the same funder, they might not get the
11 same rates. So, whereas SCS buys from several different
12 companies, we get a very nice rate because of the value and
13 the condition of our files that we send.

14 Q. The transactions that Northeastern places for
15 Advance Funding and for the other factoring companies that
16 work with it, when court approval is obtained for those
17 deals, isn't the identity of the assignee a matter of public
18 record, for instance, the Tovey trust?

19 A. It does go into a court, yes.

20 Q. Okay.

21 A. But the actual -- is not the funder, per se, the
22 person you would actually speak to. So reaching out to Tovey
23 would do you no good; reaching out to SCS, on the other hand,
24 would.

25 Q. And the middleman, if you will, in those

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1 transactions, the broker, SCS, the identity of the broker is
2 never included in a public filing?

3 A. Correct.

4 Q. What is your concern about what a competitor would
5 do with knowledge that Northeastern used SCS or another
6 similar company as a broker?

7 A. Circumvent us.

8 Q. How?

9 A. Go directly to the funding source.

10 Q. To SCS's funding sources?

11 A. To SCS and obtain their funding, yes.

12 Q. I guess I'm still having a little trouble
13 understanding. SCS is in this business, correct?

14 A. They're wealth managers. They're not in this
15 business, no.

16 Q. So the fact that SCS facilitates these lottery
17 deals is not a matter of common knowledge then?

18 A. I don't believe it's common knowledge, no, or else
19 a lot more factoring companies would be using them.

20 Q. Is it possible that there are reasons other than
21 this lawsuit that SCS is not currently doing business with
22 Advance Funding?

23 A. I do not believe that.

24 Q. Why do you say that?

25 A. Because I still talk to them on occasion, trying to

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1 continue whatever hopes that I might -- they turn around.

2 (Exhibit 14 marked for
3 identification.)

4 Q. Handing you Exhibit 14, this is an e-mail exchange
5 between -- well, I take it that the first e-mail is an e-mail
6 to your list of prospects, correct?

7 A. Yes.

8 Q. You cc them, that's your practice?

9 A. Exactly.

10 Q. And then the second e-mail is a response from
11 Richard Miller to your e-mail, and it says, "Mo, your sold
12 rates have been so far from what I can and am buying at that
13 I'm reluctant to waste your time with an offer." What was
14 your understanding of what he meant by that?

15 A. The second sentence made it clear.

16 Q. Well, I'm asking you about the first sentence
17 though. What do you understand him to mean by his reference
18 to sold rates? What's a sold rate?

19 A. I really don't know.

20 Q. You don't know?

21 A. I don't know what a sold rate is.

22 Q. I mean, this suggests to me that he can't meet your
23 terms.

24 A. On this deal, probably not.

25 Q. And what this e-mail also suggests is that's been

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1 the case with other recent deals. He says, "They have been
2 so far from what I can and am buying that I'm reluctant to
3 waste your time with an offer."

4 A. I don't know what he's referring to. I'm sorry.

5 Q. Did you ask him about it?

6 A. No.

7 Q. Did you have any communication with him about his
8 comment concerning the rates?

9 A. No. The second sentence sealed it up for me.

10 Q. So you skipped over the first sentence and went
11 straight to the second one, right?

12 A. The first one means nothing based on the second
13 one. Even if there was a rate, he wasn't going to buy it.

14 Q. Is the converse also true, even if his buyer hadn't
15 shut down, he still wouldn't buy it because the sold rates
16 are so far from what he's buying?

17 A. I think I've told you what I interpret this as,
18 but, if you would like to ask him to interpret what he meant,
19 you certainly can. I just looked on top of that and went, my
20 buyer is shut down, thanks to this transaction.

21 Q. Have you ever had any communication with Scott
22 Miller, any of the Millers, anyone at SCS, about whether they
23 can meet your rates?

24 A. I'm not sure I follow.

25 Q. Have you ever had any -- so here Richard Miller is

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1 saying that your sold rates are too far from what he's
2 buying, right? Have you had any communication with anyone at
3 SCS about that concern that he raised here?

4 A. On certain individual deals, he's certainly asked
5 to speak with me, and I spoke with him. Sometimes we'll move
6 our rates for him. It all depends.

7 Q. Did you respond to this e-mail, Exhibit 14?

8 A. No.

9 Q. Why not?

10 A. The second sentence said it all.

11 Q. Are you aware -- do you know if Richard Miller had
12 other buyers who might be interested in this deal?

13 A. It's possible, but he wasn't selling any lottery to
14 us. That he definitely has communicated to me in more than
15 one way.

16 MR. MANVILLE: This is 15.

17 (Exhibit 15 marked for
18 identification.)

19 Q. Ms. Ray, is this an e-mail string between you and
20 Mr. Miller from December 2014?

21 A. Correct.

22 Q. This is, again, an e-mail string related to a
23 potential lottery deal, correct?

24 A. Correct.

25 Q. And the last e-mail in the string is Richard

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1 Miller, and he says that his lottery buyer for files like
2 this, that's Tovey, "has informed me again that he will not
3 be buying any additional lotteries until this lawsuit with
4 Venzant is completed, and he may not buy any then," correct?

5 A. Correct.

6 Q. So your understanding, based on this e-mail, is
7 that the Tovey trust is not going to be buying additional
8 lotteries until the end of the lawsuit, at a minimum, right?

9 A. Correct.

10 Q. And then, after that, he may or may not buy them?

11 A. Correct.

12 Q. And do you have any contrary understanding, it's
13 possible that, after, the lawsuit is completed, the Tovey
14 trust will start buying lottery deals again; he may or may
15 not, that's up in the air; is that your understanding?

16 A. Right. It says that he will not buy any now, and
17 he may not buy any then.

18 Q. And you have no contrary information, he may not
19 buy any after the conclusion of the lawsuit, but he might?

20 A. We're hoping. We're hoping.

21 Q. And then Mr. Miller says, "I am working on several
22 other clients that may buy lotteries, but this one is too far
23 out for them." This suggests to me that Mr. Miller is still
24 open to the idea of buying lotteries from Advance Funding.
25 Did you read it differently?

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1 A. No. He said, "I'm working on several other
2 clients," meaning he doesn't have them, "but this particular
3 deal is too far out for them."

4 Q. What did he mean by that? What's your
5 understanding of what he meant by this one is too far out for
6 them?

7 A. I believe -- let me look at the deal -- it starts
8 in 2031. Most people like immediate payback. That's what I
9 read into it.

10 Q. How did Advance Funding respond to Mr. Miller's
11 request in July 2014 for help in liquidating all or most of
12 the Tovey trust lottery files?

13 A. We agreed to do it if he wanted to.

14 Q. And then what happened after that?

15 A. He never gave us the files or said go for it.

16 (Exhibit 16 marked for
17 identification.)

18 Q. Handing you Exhibit 16, is this the e-mail from
19 Mr. Miller dated July 17, 2014, where he raised the
20 possibility that he might need to liquidate the lottery
21 files?

22 A. That's what it appears to say, yes.

23 Q. And you responded to this by telling him, we'll do
24 it if you want to?

25 A. In those exact words, I don't know, but I had a

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1 conversation with our president, and, by the time these deals
2 had been done at the current rates, it actually would have
3 been advantageous for us.

4 Q. Oh, I see.

5 A. We were definitely willing to, but he never asked
6 us to.

7 Q. And this was John Cevallos, you had a conversation
8 with John Cevallos about this?

9 A. No, I believe these files were Advance Funding
10 files.

11 Q. So you talked with Dan Cevallos?

12 A. Yeah.

13 Q. And so how did you get back to Mr. Miller on this
14 issue, by e-mail or by phone?

15 A. I don't recall the exact, but we've had multiple
16 conversations and multiple e-mails.

17 Q. Somehow you got back to him and said, we'll do it,
18 and then that was the end of it, he didn't bring it up again?

19 A. He never asked us to do it.

20 Q. Okay.

21 A. There was a lot of conversations going back and
22 forth when he first asked, that we said, look, this is a
23 knee-jerk reaction; this is going to go away; they don't have
24 anything; they have no contract rights; you're getting scared
25 for nothing; calm down; let's see how this one plays out. So

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1 there were several conversations. I'm telling you that
2 initial conversation from Eshel caused a huge uproar. Their
3 blood pressure was up to here. It took several conversations
4 to calm them down.

5 Q. Let's look at Exhibit 8 again. This, again, I
6 think is all of the lottery deals that Advance Funding placed
7 with SCS, correct?

8 A. Correct.

9 Q. Which of these deals were not funded by Tovey?

10 A. Romilda Rivera-Diaz has not been funded by Tovey.
11 I believe Tawanda Almendino Brown, but I'd have to check.
12 She's done multiple deals. Nope, she is on the list. I know
13 I looked at the spreadsheet earlier today, and I marked down
14 which ones were Tovey, and I just cannot remember how many of
15 these were not. Clearly, if they're on Exhibit 8 and not on
16 Exhibit 9, those are the deals that Tovey did not buy.

17 Q. Should you be comparing Exhibit 8 to Exhibit 9 or
18 Exhibit 8 to Exhibit 10?

19 A. I'm confused. These don't have headings on them,
20 so --

21 Q. My understanding is that Exhibit 9 is Tovey
22 transactions; Exhibit 10 is all SCS transactions, including
23 Tovey, but mostly Tovey.

24 A. So why are we looking at Exhibit 8?

25 Q. Well, because it's the most recent version of what

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1 I believe to be the complete list of SCS transactions. But,
2 right at the top -- that's how it was presented to us, but,
3 right at the top, I'm not sure why Laura Haber on Exhibit 10
4 is not also listed on Exhibit 8.

5 A. I just don't recall. The names are blurring.

6 Q. And then there are some names, some other names on
7 ten, that don't seem to be on eight. Vargus.

8 A. These are deals going in '14. You're saying that
9 Exhibit 10 was given to you as all SCS deals?

10 Q. Correct. And then Exhibit 9 supposedly was all SCS
11 deals funded by Tovey. Exhibit 8, I believe, was, again, all
12 SCS deals. I just need a little clarity.

13 A. I just find it hard to believe this is an SCS deal,
14 and it's dated 4/1/14.

15 MS. FOX: Well, let's just -- is there a
16 question before the witness?

17 Q. Yes. What are all the SCS deals? What are all the
18 deals that Advance Funding has placed with SCS? Two of these
19 charts purport to show that, yet they don't agree with each
20 other. So I'm just trying to figure out what all the deals
21 are.

22 A. All right. So nine is Tovey, so we're really
23 looking at eight and ten.

24 Q. I think that's right. And I think the question
25 that I have is: Why are there some names on ten that are not

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1 on eight and some names on eight that are not on ten?

2 A. I only presented one table, so I don't know where a
3 second table came from, unless it's --

4 Q. What do you mean you only presented one table?

5 A. For SCS deals. "Current deal that Tovey refused to
6 buy . . . been unable to assign." Without looking at my
7 records, I cannot answer your question.

8 Q. Okay.

9 A. Sorry.

10 Q. Okay.

11 A. I don't want to give you a false answer.

12 Q. Okay. Well, let's take a look at Exhibit 8. Let's
13 just start with the first deal here D&G McGee Enterprises,
14 LLC.

15 A. Okay.

16 Q. This was in Texas, correct?

17 A. Correct.

18 Q. Contract date of May 18, 2012?

19 A. Correct.

20 Q. And the number of payments, that's the number of
21 payments that were assigned to whoever the investor was on
22 this deal?

23 A. Correct.

24 Q. And it appears that the investor was Tovey because
25 this winner is listed in Exhibit 9, the Tovey list?

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1 A. Okay.

2 Q. And then first payment and last payment, these
3 are -- so I take it these are annual payments?

4 A. Yes.

5 Q. All right. The next column is, "Payment Amount."
6 What does 60 K and 120 K refer to there?

7 A. Some of the payments were in the amount of 60,000
8 and some were in the amount of 120,000.

9 Q. I see. Is that a common occurrence?

10 A. I'm sorry?

11 Q. Is that a common occurrence?

12 A. Like I said, there's several instances where a
13 lottery winner will only want to sell a certain portion, or
14 maybe they've already done a prior assignment with another
15 funding company or with us.

16 Q. So is this -- so in the payment amount column,
17 these aren't payments that the lottery winner is suppose to
18 receive from the lottery, these are the payments that are
19 being assigned?

20 A. Correct. These are deal terms.

21 Q. What is the PP column?

22 A. Purchase price.

23 Q. And then the docket number, that is the case in
24 which an order was obtained approving the assignment
25 agreement?

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1 A. Correct.

2 Q. Tell me what the rate is here.

3 A. 7.17.

4 Q. How is that derived?

5 A. That's the rate --

6 Q. Was this the rate that was offered to the lottery
7 winner?

8 A. I doubt that. This rate looks like a rate to
9 determine profit.

10 Q. So is this the rate that the buyer would pay?

11 A. That is the rate that the buyer paid for that
12 transaction at that time.

13 Q. I see. So do you know what rate, in this D&G McGee
14 Enterprises matter, was offered to the lottery winner?

15 A. The rate offered to the lottery winner would be on
16 the disclosure statement, which I do not have in front of me.

17 Q. Presumably, you would need that rate to calculate
18 the profit, wouldn't you?

19 A. No.

20 Q. Okay. Can you tell me how you calculated the
21 profit in this instance.

22 A. You calculate the purchase price using the rate
23 from the funder and deduct the purchase price that you paid
24 to the winner.

25 Q. So can you walk me through it here?

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1 A. Sure. You would take those deal terms and put them
2 into TValue.

3 Q. Sorry. Slow down, because math was never my strong
4 suit. So what am I putting into TValue here, purchase price?

5 A. No, sir.

6 Q. No? Okay.

7 A. The deal terms.

8 Q. All right. So number of payments, payment amounts?

9 A. Correct. The rate. And then you would put unknown
10 for purchase price.

11 Q. And the rate is what rate, the rate that was
12 offered to the lottery winner?

13 A. You're trying to calculate profit. So it's the
14 rate that was paid by the funder.

15 Q. But isn't profit -- isn't profit calculated by
16 reference to the spread between the rate paid by the funder
17 and the rate offered to the lottery winner?

18 A. That's what I explained, yes.

19 Q. So how do I calculate profit without knowing the
20 rate that was offered to the lottery winner?

21 A. It has nothing to do with the rate offered to the
22 lottery winner. The only thing you have to focus on is the
23 purchase price.

24 Q. Okay.

25 A. So the profit, you take the rate that is being

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1 offered by the funder on the date of funding, put in the deal
2 terms and the date of funding, leave unknown for what would
3 be a purchase price, and calculate the purchase price that
4 you're going to get from the funder. Then you deduct the
5 purchase price you owe to the winner out of that, and that
6 leaves you profit.

7 Q. Okay. What's the difference between a rate
8 expressed as a percentage and a rate expressed as a
9 percentage net?

10 A. That means that the funder has asked to buy the
11 payments net of state tax, meaning we have to eat that.

12 Q. Okay. Does the question of whether the funder is
13 buying payments net of state tax impact the rate that is
14 being offered typically?

15 A. I have no idea what goes into the rate offerings.
16 I'm sorry.

17 Q. In your experience, do you see that, when a rate is
18 offered net of state tax, it tends to be lower?

19 A. I don't pay attention to numbers, unfortunately.
20 That's the president's job.

21 Q. Okay. And so, comparing Exhibit 8 to Exhibit 9 --
22 so Exhibit 8 we think is SCS deals. Whether it's all SCS
23 deals is maybe somewhat unclear. Exhibit 9 is SCS deals
24 funded by Tovey. So, if we go down the list here, we see D&G
25 McGee Enterprises. So, in that instance, Tovey bought that

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1 deal at a rate of 7.17 percent, correct?

2 A. Correct.

3 Q. And then, with Jessica Lopez, it was 7 percent net,
4 and that was another Tovey transaction, right?

5 A. Yes.

6 Q. With Roneaka Woods, it was eight and a quarter
7 percent, correct, another Tovey transaction?

8 A. Correct, starting in 2030.

9 Q. And then so on down the table. The rate with
10 Forchetti was seven and a quarter percent net, another Tovey
11 transaction, correct?

12 MS. FOX: I think we need clarification.

13 A. Starting in 2021, yes.

14 MS. FOX: Because you're referring to the
15 Tovey transaction, and he was the ultimate assignee, but I
16 don't know that you can assume that that is the rate that
17 Tovey paid, since the transaction is actually between Advance
18 Funding and SCS. So, just so that the record is clear, these
19 are all deals where Tovey was the ultimate assignee.

20 THE WITNESS: We don't get paid by Tovey; we
21 get paid by SCS. So whatever percentage.

22 Q. Fair enough. So you don't know what the deal may
23 have been between SCS and Tovey?

24 A. Right. That's our purchase price rate.

25 Q. Fair enough. All right. So these are the rates

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1 that you're getting from SCS with Tovey as the funder?

2 A. Correct.

3 Q. And, going on down the list, Nehemiah Bellamy, a
4 rate of 7 1/2 percent net; Sheena Venzant, 7.5 percent, and
5 so forth, correct?

6 A. Sure.

7 Q. And the most recent of the deals shown in Exhibit 8
8 is Tawanda Brown, June 2014, with a rate of 7.9 percent,
9 correct?

10 A. Correct.

11 Q. And then Romilda Rivera-Diaz, also in April 2014,
12 that was a rate of 8 percent, correct?

13 A. Correct.

14 Q. I guess one thing I am curious about, there are
15 three deals listed here, two of which appear on, also appear
16 on Exhibit 9, so they're Tovey deals, and these deals all
17 have a contract date of April 2014 or later. And I thought
18 that you testified earlier that, beginning with the phone
19 conversation between Mr. Bar-Adon and Scott Miller back in
20 March 2014, SCS stopped buying Advance Funding deals.

21 A. They did.

22 Q. So why are these deals listed on this spreadsheet?

23 A. The 2014 deals?

24 Q. Yes.

25 A. I can tell you that William Jay Cox was in contract

1 prior to that date.

2 Q. Okay.

3 A. Renegotiated his deal, and, because Tovey had
4 committed to it, we kept him on that list.

5 Q. What about the others? What about Tawanda Brown?

6 A. Tawanda Brown, she was definitely an earlier
7 transaction. She was -- I'm seeming to recall she might have
8 been life contingent, but I'm not 100 percent sure because
9 there were a lot of issues with her, but -- they definitely
10 did not commit to any deals beyond those that they had
11 already committed to. So I can answer that distinctly.

12 Q. Romilda Rivera-Diaz, was that a Tovey transaction?
13 I see in the margin here a note that says, "Current deal that
14 Tovey refused to buy, which to date we have been unable to
15 reassign."

16 A. Correct. That was the one that was originally
17 done, and we found out that she had the tax lien. This is
18 the exact deal that that I was referencing. We've tried to
19 rewrite it, and then we still -- the tax lien grew, and we
20 still can't -- we can't get rid of this deal.

21 Q. So let's take a look now at Exhibit 7. And, on
22 this spreadsheet, what's represented by the rate column?
23 What are the numbers in the rate column showing?

24 A. That's the rate we secured from an alternate
25 funder.

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1 Q. And then you have state; contract date; again,
2 number of payments; first date; last date; assigned payments.

3 Is that the total amount of assigned payments, or is that --

4 A. That's each payment.

5 Q. Each payment, okay. And what is the Miller rate on
6 this spreadsheet?

7 A. This -- I told you earlier -- this is when I sent
8 him a list of the deals that we had done subsequent, sent it
9 to him, and said, if you would be interested in either of
10 these deals at the time that they were presented or would
11 have been presented, would you please provide a rate that the
12 Millers or SCS would have purchased this from us, and so he
13 provided rates.

14 Q. And so, the lower the rate, the better for Advance
15 Funding, correct?

16 A. Absolutely.

17 Q. Why are the rates in Exhibit 7 generally so far off
18 from the historical rates that SCS paid for these deals?

19 A. Well, I'm glad you asked that. That would be a
20 number of reasons. One, the initial couple of years that
21 Advance was in business, I would imagine they weren't as
22 comfortable with them, and then they became a little more
23 comfortable. Case in point, if we look at the first Nehemiah
24 Bellamy, and then the second Nehemiah Bellamy, it went down
25 by a half a percentage. It was gradual. This is what I say,

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1 I foster these relationships, and so I had to do that for
2 Advance, as well. And then, of course, the market tanked
3 obviously. If BOFI is your client, they've told you what
4 rates are now. As a matter of fact, speaking of Brian, BOFI
5 offered 5 percent on that.

6 Q. Do you know if BOFI would have taken a loss on that
7 deal?

8 A. No, they would not.

9 Q. How do you know that?

10 A. Because that's what the market rates are. I mean,
11 you can look right here.

12 Q. And so did you ask -- with regard to Exhibit 7, did
13 you ask the Millers what rate they would have quoted as of
14 the contract date?

15 A. I asked just what I said before: If these were
16 presented to you in the times that they were contracted, what
17 rate would you have given me?

18 Q. And so, for example, the fourth deal on Exhibit 7
19 MPR, with a contract date of the October 11, 2012, the
20 Millers are telling you they would have given you a contract
21 rate of 4.75 percent as of that date?

22 A. I don't think that they could have said as of that
23 date. I think all of this was -- basically, these were all
24 presented after, so we're talking about the time period after
25 all of this happened. So it wouldn't have been presented in

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1 October of 2012. It would have been presented at some point
2 after the lawsuit until now. These are our current
3 transactions.

4 Q. Right. But when after the lawsuit?

5 A. Most of these --

6 Q. For that one.

7 A. Most of these may not have even been presented
8 because we knew they weren't buying them. I can't answer you
9 on each one. I don't keep track of when I send out deal
10 terms to every prospective funder.

11 Q. Let's look at the first transaction listed in
12 Exhibit 7, the DAM transaction. So, on this one, does this
13 table tell me that, according to SCS, it would have offered a
14 rate of 5.5 percent for that deal as of July 1, 2014?

15 A. I would really prefer that you asked him these
16 questions. I sent him this exact table and asked him: What
17 rate, keeping in mind the time, would you have given me? His
18 idea of time was from the point that Tovey stopped buying
19 until now.

20 Q. This is what I'm trying to pin down. What exactly
21 did you tell him?

22 A. That's exactly what I told him.

23 Q. So run that by me again.

24 A. Here's a list of deals we've done.

25 Q. Right.

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1 A. Some were presented to you, some weren't, but, if
2 you were going to bid on them, please tell me what your bid
3 would have been, keeping in mind the time.

4 Q. That's what I'm having trouble understanding. What
5 did you mean, keeping in mind the time?

6 A. He knew that this was a damages thing. So he knew
7 that it was -- these were deals that were done, that they did
8 not buy or would not buy, could not buy, whatever. So I
9 asked him, if you were to be interested in these deals, give
10 me the rate. Obviously, he can't go back and determine what
11 his rate would have been in 2012. The deal wasn't presented
12 in 2012. It was contracted in 2012. This might be one where
13 we owned the payments, or it might be a reassignment, someone
14 who no longer wants to own the payments. That date is not
15 indicative of when it would have been presented. All of
16 these were done post this lawsuit.

17 Q. Right, and I understand that, and I'm trying to
18 figure out what post this lawsuit means, because that is a --
19 the lawsuit was filed in April 2014, and we're now in
20 September 2015, so that's a year and a half time window,
21 during which interest rates have fluctuated. What time
22 period is he using? Do you have any idea? Did you give him
23 any guidance?

24 A. That's why I said, no, I would like for you to ask
25 that question of him. I can't. I can't answer. I asked him

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1 for what rate he would give me; he did.

2 Q. And you don't have any idea how -- sorry, was this
3 Richard Miller or Scott Miller?

4 A. This was Rick Miller.

5 Q. Rick Miller. Which one's -- there are two Richard
6 Millers.

7 A. There's two Richards.

8 Q. Junior and The Third?

9 A. Correct.

10 Q. Does one of them go by Rick?

11 A. Yes.

12 Q. And the other one goes by --

13 A. Rick or Ricky is The Third. He's the one with
14 Tovey as the client.

15 Q. So is he the son of Richard, Jr.?

16 A. Yes. Yes. He's basically the only one that's
17 really operating right now. Both of those gentlemen, they'll
18 pick and choose cherry files that they want to keep for their
19 own personal portfolio, but they've basically turned their
20 business over to their son and nephew.

21 Q. So this is Miller III providing these Miller rates?

22 A. Correct.

23 Q. And you don't know where these rates came from?

24 You asked him just -- you sent him this spreadsheet with the
25 instructions that you've testified to, and then he sent it

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1 back to you with the numbers in it?

2 A. Correct.

3 Q. And then this was presented to us to support
4 Advance Funding's damages claim?

5 A. I added the lost profit column, because he would
6 obviously have no knowledge of that.

7 Q. Okay. And, after you got this table, this
8 spreadsheet back from him, did you discuss with him the
9 Miller rates? Where did he come up with 5 1/2 percent for
10 lottery winner DAM, for instance?

11 A. I did not.

12 Q. You didn't ask him for clarification of these
13 rates?

14 A. I would never ask anyone for a clarification of a
15 rate. I accept their rates.

16 Q. You understand that you are here today to testify
17 regarding Advance Funding's damages claim and all the facts
18 supporting Advance Funding's claim, correct?

19 A. Correct.

20 Q. And you're telling me that a key element of Advance
21 Funding's damages claim is essentially a black box, that you
22 don't know where the numbers came from, correct?

23 MS. FOX: Misstates the testimony. I think
24 she said she knows where the number came from.

25 Q. How they were derived. You don't know how they

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1 were derived?

2 A. I don't know how any of our funder's numbers are
3 derived. I know how the lost profit was derived.

4 Q. But the Miller rate, you don't know how that was
5 derived?

6 A. That was derived from Mr. Miller.

7 Q. Right. You didn't talk to him about where these
8 numbers came from in preparation to testify today, correct?

9 A. I don't ever talk to a funder about their rates. I
10 asked him what rate he would offer; I accept his rate. I
11 would never question a rate.

12 Q. Well, I'm not asking whether you would question it.
13 I'm asking if you --

14 A. You are. You're asking me where it came from. I
15 would never ask anyone -- it came from him.

16 Q. Right. You have testified that you don't know the
17 exact time frame that he used to come up with these rates,
18 for instance, so you didn't seek to clarify that with him?

19 A. Is there a question?

20 Q. Correct?

21 A. Correct.

22 Q. Was it your experience in dealing with SCS over the
23 years that they were consistently offering you rates that
24 were 2 to 3 percentage points lower than what anybody else
25 would be offering?

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1 A. Not always, but, when we got to the point of having
2 only one lottery funder, it did.

3 Q. I'm sorry, I'm not tracking that. I just didn't
4 understand your answer.

5 A. Okay. Generally, I have several funders, and I can
6 play one off the other. Case in point, the e-mail that you
7 brought into evidence with the 7 1/2 rate, that was a rate I
8 had. Obviously, that was not the rate that Rick had given to
9 me. So I said, "Well, I have 7 1/2. If you want it" --
10 blah, blah, blah. So there's a negotiation sometimes. I
11 give them the opportunity to buy, and I try and lower our
12 rate. That's what I do.

13 Q. Do you know if there are other funders out there
14 who would be willing to offer rates similar to the Miller
15 rates shown in Exhibit 7?

16 A. None that I've known of. If you have them, please
17 let me know. I would love to develop another funder for
18 lottery.

19 Q. Do you know one way or other whether there are
20 funders out there or perhaps many funders out there who would
21 be able to match these rates?

22 A. That's not in my purview.

23 Q. You don't know one way or the other?

24 A. That would be the presidents. Yeah, they're the
25 ones that develop the leads.

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1 Q. So, again, walk me through the math on Exhibit 7.
2 So, for the first transaction listed there, how do you
3 calculate the lost profit?

4 A. I take the deal term, put them into the TValue, put
5 in the rate for Miller, calculate what that purchase price
6 would be, then I calculated the purchase price that we got
7 based on the rate of 6.676, and the difference is the profit
8 that was lost.

9 Q. Do you anticipate that Advance Funding will lose
10 additional profits in the future similar to the ones listed
11 in Exhibit 7?

12 A. Unless and until we find some sort of alternate
13 funding source, I would imagine we will continue to lose more
14 profit.

15 Q. Is Advance Funding making a claim in this lawsuit
16 for loss of those additional profits?

17 A. We're making a claim for all damages. It's just
18 hard to quantify exactly how much will be lost in the future,
19 because it's speculative, and we understand that.

20 MR. MANVILLE: Why don't we take a break for
21 just a few minutes. Let me see how much I have left, maybe
22 not very much.

23 THE VIDEOGRAPHER: We are going off the
24 record. The time is 3:32 p.m.

25 (A brief recess was taken.)

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1 THE VIDEOGRAPHER: We are back on the record.

2 This is the beginning of Disc No. 4, and the time is 3:42.

3 Q. Ms. Ray, when SCS quotes a rate, does the rate that
4 it quotes to you always account for state tax withholding one
5 way or another?

6 A. Unless they ask for it to be not. They will
7 specifically ask for it to be net of state tax.

8 Q. So, if they don't ask for that -- the way they
9 operate, if they don't ask for that, then the rate they're
10 quoting is not net of state tax, and, if it's net of state
11 tax, they specifically include that in their quote?

12 A. Or they'll say, I'm not interested, and I'll say,
13 why aren't you interested, because I don't have very many
14 lottery people. So they'll say, well, they don't want to
15 file a state return in that state. And I'll say, okay, well,
16 what if we do it net of state tax? It's not always their
17 asking, sometimes it's my suggestion, because I don't have a
18 lot of possibilities for funders.

19 Q. Right, but I guess my question is, that issue of
20 whether a quote is going to be net of state taxes, is an
21 open -- it's discussed openly, I guess, right?

22 A. If it becomes an issue, it is discussed.

23 Q. I mean, it's either part of the quote or not
24 part -- it's not buried anywhere?

25 A. No, it's not a surprise.

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1 Q. That's what I mean.

2 A. Unless someone miraculously forgets something that
3 they said.

4 Q. Okay. And that's your relationship with SCS,
5 that's the way they quote their deals?

6 A. That's the way everyone quotes their deals.

7 Q. That's the way everybody does it?

8 A. Yeah. If anybody has an issue about a rate or a
9 question about a rate, they'll ask it. A lot of that comes
10 with the insurance policies on life contingent deals.
11 They'll say, are the premium my responsibility or your
12 responsibility? And it's a different answer for different
13 people, depending on the rate that we get and what we need
14 and rates at that time.

15 Q. Looking again at Exhibit 7, the rates quoted here
16 in the second column, has it been your experience that the
17 rates that have been quoted by other brokers since March 2014
18 have been elevated because SCS is not bidding on these deals?

19 A. I think they know that we -- they are our only
20 source. We only have one funding source for lottery now,
21 so --

22 Q. So, if SCS had been bidding on the DAM deal, what
23 rate would you have been able to get from the broker that
24 actually funded that deal?

25 A. I might have been able to get them lower than 5.5.

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1 Q. Do you know one way or another?

2 A. I would have no way of knowing that without having
3 that rate at the time.

4 Q. And is that true of all these deals, you might have
5 been able to get them a lower rate if SCS had been
6 participating, but you don't know, and you don't know how
7 much?

8 A. I would have no way -- I mean, that's pure
9 speculation.

10 Q. And so now, assuming SCS is not participating in
11 these transactions, Northeastern has six funding sources that
12 it works with?

13 A. No -- well, yes, if you take SCS off, there are six
14 others that do, but that's -- not all of them do lottery.
15 Obviously, you know that, yes.

16 Q. How many of them do lottery?

17 A. Only one.

18 Q. One, other than SCS?

19 A. We used to have two others, but, for whatever
20 reason, they're not buying lottery right now either. They're
21 stating -- their specific response to that was state tax
22 issues. There are two states that are apparently not
23 allowing them to file state tax returns and recapture the
24 tax, which makes it not as lucrative an investment for them.
25 They just don't want to deal with it.

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1 Q. Do you know if that issue is also an issue for SCS?

2 A. If it is, we offer to sell it net of state tax.

3 There are several states that they buy from that they expect
4 that they're going to file a return, but the problem states
5 are still the problem states for anyone. So they would
6 probably buy them net of state tax, but I would have to send
7 them the rate quote -- excuse me -- the stream, and they
8 would bid, or they wouldn't bid.

9 Q. The other two funders that are no longer doing
10 lottery deals because of these state tax issues, you're not
11 willing to do deals with them net of state tax?

12 A. Oh, I'm willing to do deals. If we're still going
13 to make a profit, I'm willing to do it, absolutely. They
14 don't come back and say that. Sometimes that's something I
15 find out perhaps -- I can tell you, case in point, at an ASP
16 conference, which is not a social engagement, but it's not
17 related to lottery whatsoever; however, a lot of the same
18 players for lottery are in structured and vice-versa. So I
19 took advantage of that meeting time in a more casual
20 atmosphere and asked, hey, why aren't you bidding on my
21 lottery deals? Because, like I said, these people come back
22 and forth. Sometimes they just don't want any more because
23 of saturation limits. Sometimes they don't have wealth --
24 they're handling wealth management for people who just don't
25 want lottery right now. Sometimes they get a new client, and

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1 that person has an appetite for lottery because they've been
2 experienced with it. There's lots of ifs, so it's hard to
3 say. And that's why this has been so hard to quantify,
4 because I don't know what the future holds. I don't think
5 anybody knows what the future holds. But I can state
6 succinctly that these are the deals that we've done, these
7 are rates that we got, and these are the rates that
8 Mr. Miller gave me.

9 THE VIDEOGRAPHER: Monica, can you put your
10 mic back on your jacket.

11 Q. Prior to March 2014, can you identify a particular
12 deal that Northeastern presented to SCS and that SCS turned
13 down?

14 A. Northeastern does not present deals; Advance
15 Funding has deals.

16 Q. Sorry, through Northeastern.

17 A. Oh, okay. Well, through me, I'm actually speaking
18 on behalf of Advance.

19 Q. Right.

20 A. Not Northeastern. Now, say again. I'm sorry.
21 Deals that have been presented?

22 Q. Did Advance Funding ever propose a deal to SCS that
23 SCS turned down before March 2014?

24 A. They would never turn down a deal, instead they
25 would just not bid.

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1 Q. Participate. Can you think of an example of a deal
2 they didn't bid on?

3 A. We don't keep track of nonparticipation, so it
4 would be hard. It's not something that would be like, hey,
5 Rick never responded. The only way that would come to light
6 would be if the other rate that we got from the other funder
7 was so high that I was like, we need a comparative, we need
8 something. Then I would go back, hey, why didn't you bid on
9 this? Or sometimes if a certain amount of time goes by and
10 I've sent a couple e-mails and he doesn't respond, I'll say,
11 hey, did you get my e-mails, or something, because,
12 obviously, competition is healthy. So I want a second rate.
13 Even if it isn't the highest rate or the lowest rate, it's
14 something to compare to. Plus I have to give these rates to
15 the applicable president, which is Advance right now. Like I
16 said, Northeastern hasn't done a deal since 2010. And I have
17 to say, these are the rates I got. It's a reflection on my
18 ability to get him the best deal. So, of course, I'm going
19 to try and get it as low as I can. I'm going to do whatever
20 is in my power.

21 Q. Where do you work? Do you work from home?

22 A. It's a home office. It's not technically in my
23 home, but it is on my property.

24 Q. So it's a separate building?

25 A. It's a separate building, yes. I actually have to

1 walk outside to go to work.

2 Q. That's not too bad.

3 A. No, it's still great.

4 Q. And are most of Advance Funding's employees in New
5 York?

6 A. Oh, yes.

7 Q. Are the rest of them headquartered in New York?

8 A. They used to have, in addition, a research
9 department in Pennsylvania. That's been closed down.
10 They've incorporated all those people into the New York
11 office. So they had to get a bigger office. And the legal
12 has always been separate.

13 Q. Right. You mentioned that.

14 A. Right. And that's down in Florida.

15 Q. And so, except for legal, all of Advance Funding's
16 employees are in New York?

17 A. Now, yes.

18 Q. Is that also true of -- are all of Northeastern's
19 employees in New York, except for you?

20 A. Northeastern doesn't really have employees right
21 now. Like I said, John is pretty much retired.

22 Q. Okay. Wait. Now, you're an employee of
23 Northeastern?

24 A. I was always an employee of Northeastern.

25 Q. Are there any others?

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1 A. That still remain? I don't think there are. I
2 really don't. Everyone else basically went over to Advance.

3 Q. Advance.

4 A. Yeah. And I'm only still Northeastern I think
5 because John doesn't want to let it go completely; otherwise,
6 I would be an Advance employee, because I do most of my work
7 for Advance.

8 Q. If BOFI had not communicated with SCS about the
9 Venzant matter and then filed this lawsuit, how many deals
10 would Advance Funding expect to place with SCS in 2015?

11 A. I think that's what this is. Actually, a lot of
12 this was 2014. Obviously, this is an ongoing, you know,
13 however many that we do for the rest of the year. We would
14 expect a large portion of that to be them. There are some
15 deals that that other funder, which is an insurance company,
16 they have an appetite for, and they will bid lower than SCS.
17 But, more often than not, SCS because they don't have high
18 overhead, they'll bid lower. Whereas, the insurance company
19 has servicing issues, different costs that make their rates a
20 little bit higher. So I think that's a large reason why the
21 rates are a little bit higher, or, in some cases, a lot
22 higher. Particularly, if it's monthly payments, you'll
23 notice 240 monthly, that got a 14 percent rate. Well, that's
24 a servicing issue. They have to pay a servicer, and then
25 they have to pay a fee, and then there's auditing and all

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1 that good stuff. So it goes into their rates. And SCS
2 doesn't have that, so --

3 Q. So is it your assumption that all of the deals
4 referenced in Exhibit 7, all of those deals SCS would have
5 done, except for the ones indicated by couldn't sell in the
6 Miller rate column?

7 A. It's -- from what he provided, I would definitely
8 have picked this rate over that rate, in a heartbeat.

9 Q. Right. But your understanding is that, not only
10 would he have quoted you the rates listed in the Miller rate
11 column, they would have agreed to do these deals, all of
12 them?

13 A. I think, by the time of 2014, I think we had
14 established a very good history of deals going through, no
15 problems, no issues, no lawsuits, no nothing. So I think
16 they had gotten to that comfort level. I have no doubt
17 that -- can I say 100 percent? No, but, I mean, these rates
18 look awfully attractive to me. I would have taken them.
19 They have never backed out of a transaction, if that's what
20 you're saying.

21 Q. Well, I'm just asking, if you know, if Mr. Miller
22 presented you these Miller rates as kind of a hypothetical or
23 if he was also telling you that he would have bought all
24 these deals?

25 A. I asked him specifically --

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1 Q. And he said he would have bought them?

2 A. -- what is the rate that you would have given us at
3 the time for these deals?

4 Q. Okay.

5 A. So there was no hypothetical involved.

6 MS. FOX: Be sure and let him get all his
7 question out before you start answering him.

8 THE WITNESS: I'm sorry.

9 MR. MANVILLE: I think I interpreted that
10 time.

11 THE WITNESS: I did notice something else.
12 This letter -- or excuse me -- e-mail.

13 Q. What exhibit?

14 A. Exhibit 16. I'm looking at the date of it. It's
15 dated July 17th. That's before the Millers were served with
16 the lawsuit. This is where he is has asked me --

17 MS. FOX: What number are you?

18 THE WITNESS: Exhibit 16, I'm sorry.

19 A. -- about buying back the files. So, in answer to
20 your question before, when I said I wasn't sure about the
21 timing, now I'm absolutely positive.

22 Q. Do you shop every lottery deal to SCS?

23 A. I shop every deal to every funder regardless of
24 what type of deal it is. I explain to them that they're on a
25 distribution list, you know, don't respond if -- because the

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1 insurance company can't take any structured, period, it's
2 just because they're an insurance company. So I know they're
3 not going to bid on those. So it doesn't alarm me, it
4 doesn't send off any red flags, but I'm not going to take
5 them off the list just for that one deal because I send
6 multiple deals sometimes at a time. So they might be
7 interested in some or -- I don't want the hassle of trying to
8 remember what everybody wants every single time, because
9 things change, too.

10 Q. Am I correct that you have, however, taken SCS off
11 your distribution list?

12 A. No. I just don't ask them why they're not
13 presenting bids.

14 Q. I see. So they're still getting all the e-mails
15 from you, they're just not responding?

16 A. Not responding or responding saying that, you know
17 we can't buy any. So I finally had a conversation, look, if
18 you're -- the same conversation -- you're on a distribution
19 list, you don't need to keep responding. I get it. It's
20 just more of a hassle for me to take you off than for you to
21 just not respond.

22 Q. Now, just to confirm, with regard to these Miller
23 rates in Exhibit 7, there is no agreement or commitment by
24 Mr. Miller setting forth any of these rates, right? This is
25 you asked him to fill in the table, and he responded and

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1 filled in the table, and that's the extent of the
2 documentation that you have from him relating to these rates,
3 correct?

4 A. Correct. And, just to be clear, even if he did
5 commit to that and I sent him a committal letter -- excuse
6 me -- e-mail, there's still no commitment that he has to sell
7 us at this rate. He could receive the closing binder and
8 say, I don't like this deal, this has an issue, or he could
9 say anything. We never, ever, ever force the funder to buy
10 because that's not good business.

11 Q. For each of the deals referenced in Exhibit 6 --

12 MS. FOX: Exhibit 6?

13 MR. MANVILLE: Eight, sorry.

14 Q. -- Exhibit 8, can you tell me what rate was offered
15 to the lottery winner?

16 A. No.

17 Q. And that's also true with regard to Exhibit 7,
18 correct?

19 A. Right. I would not be putting rates to lottery
20 winners. It doesn't pertain.

21 Q. Deals listed in Exhibit 7, have they all been
22 funded by the same investor or by different investors?

23 A. I did not write the funder down. I do know that we
24 have predominantly one funder, and it's an insurance company.
25 Select deals will be purchased by two other wealth management

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1 people that we deal with, but I did not write down who
2 actually funded. I only wrote down the rate I got.

3 Q. Does Advance Funding expect to do business with SCS
4 in the future?

5 A. We are doing business with SCS on structured.

6 Q. On structured?

7 A. Yes.

8 Q. Okay. What is the nature of -- tell me about that.
9 Has the business that Advance Funding has done with SCS with
10 structured settlements since March 2014, has that changed
11 since the filing of the lawsuit?

12 A. I don't believe that it has. I haven't heard any
13 blowback on structured. Structured is a completely different
14 animal.

15 Q. Does the Tovey trust also buy structured settlement
16 payments?

17 A. I don't recall that he has.

18 Q. He's lottery only?

19 A. If he has bought structured, I either don't recall
20 it or -- I really don't recall him ever being on the
21 structured file. I'm going off of memory, and I've seen
22 15,000 names, so -- but I'm fairly certain.

23 Q. How many structured settlement deals has Advance
24 Funding done with SCS in 2015?

25 A. I didn't focus on structured; I only focused on

1 lottery.

2 Q. Can you give me an approximate number?

3 A. I really can't.

4 Q. Do you know how many --

5 A. I know they just started. They didn't have a
6 structured department.

7 Q. This is Advance Funding?

8 A. Correct.

9 Q. And I think you might have said this earlier: When
10 did they start the structured department?

11 A. 2014, we had a full year, and this is our second
12 year of doing structured.

13 Q. So did you have a full year in 2014?

14 A. Yes. Absolutely. Literally, from January --

15 Q. January 1?

16 A. Yeah. We hired --

17 Q. Is that when you started?

18 A. Yes. We hired a paralegal, and we had a structured
19 department. And it was a debacle, but we won't go into that.
20 Trying to get back into a field that you haven't been in in
21 seven years, everything that we had was outdated. It was
22 horrible, but --

23 Q. And so did you do structured settlement deals with
24 SCS in 2014?

25 A. I would say yeah, yeah. As a matter of fact, they

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1 like structured. The Millers themselves have purchased
2 structureds for their own personal retirement portfolio.
3 They can't do the lotteries, just so you know. I'll answer
4 that question for you right now. They can't do lottery
5 because of state tax and retirement -- the retirement vehicle
6 that purchases structureds because structureds are tax
7 exempt. They can't contemplate filing a return for a
8 pension, a retirement pension, so that's why.

9 Q. Do you know approximately how many structured
10 settlement deals Advance Funding did with SCS in 2014?

11 A. I really don't. I didn't look at the numbers at
12 all.

13 Q. Do you know if the number of structured settlement
14 deals that Advance Funding has done with SCS has increased
15 over time?

16 A. If I had paid attention, I would be able to answer
17 that. I would be guessing if I tried to answer that.

18 Q. As you sit here, you can't think of a way in which
19 the structured settlement business between Advance Funding
20 and SCS has been impacted by the lawsuit?

21 A. I can honestly tell you it hasn't.

22 Q. Has not, okay.

23 A. The only -- it's only lottery, and lottery is just
24 difficult, again, because of state tax. That's the only
25 thing that makes lottery less desirable than structured,

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1 taxes. Sorry.

2 Q. So does Advance Funding expect to go do business
3 with SCS in the future relating to lottery transactions?

4 A. We certainly are hoping.

5 Q. What do you think will have to happen first before
6 that business relationship can pick up again?

7 A. Time and trust again, you know, rebuilding what
8 we've built over the past several years. I don't see -- and
9 it might not even. I don't know. Rick apparently has tried
10 several times to get Tovey to even bid on something that
11 we've presented, and he's adamant. And lawsuits do that.
12 He's never been sued on any of his other investments. So now
13 he gets sued on these lotteries. So he's lost a taste for
14 it, I think. I don't think we'll get him back, but I can't
15 say never.

16 MR. MANVILLE: Let's take about a three-minute
17 break, because there's one document that for some reason is
18 not in my stack here.

19 THE VIDEOGRAPHER: We are going off of the
20 record. The time is 4:08.

21 (A brief recess was taken.)

22 THE VIDEOGRAPHER: We are back on the record.
23 The time is 4:13.

24 Q. Ms. Ray, I want to ask you a few questions about
25 Advance Funding's supplemental responses to BOFI's

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1 Interrogatories 17 and 18. So there are a number of
2 statements in here that I want to ask questions about.
3 Advance Funding states that it has had to seek more costly
4 and less available funding elsewhere and in some instances
5 was not able to secure funding at all. I want to know if,
6 the instances that you're referring to are shown on
7 Exhibit 7, are these the two deals where there's a couldn't
8 sell note in the Miller rate?

9 A. Those are two of probably more than two. If we
10 knew for whatever reason that the insurance company wasn't
11 going to like the deal, we didn't even write it. There's no
12 sense. We didn't have another funding source. So we kind of
13 know what the insurance company will take and what they
14 won't. So there were some that we lost because we knew not
15 to even contract. There was no sense.

16 Q. But you think -- is it your position that SCS would
17 have done those deals?

18 A. It's a very high likelihood. I don't see why they
19 wouldn't have. They're not as picky as the insurance company
20 is. The insurance company -- just to clarify what I'm
21 saying -- I'm sorry to interrupt -- they do have saturation
22 limits, they do have a portfolio that they're filling up, and
23 what not. So, whereas SCS sells to different people and
24 Tovey, I don't think Tovey has those concerns. I believe
25 Tovey's wealth is well above anything that I could fathom.

1 So I think that's why.

2 Q. Do you have any idea how many of those deals
3 Advance Funding was not able to secure funding for allegedly
4 because of this lawsuit?

5 A. It would take me a long time to try and figure it
6 out. I could eventually probably find it, but there's no
7 guarantee I could quantify that. That's why I didn't include
8 it.

9 Q. As you sit here today, you don't know how many of
10 those deals there are?

11 A. No. I wasn't going through my daily workday
12 thinking how I was going to get BOFI back for this deal or
13 that deal. It was just business as usual.

14 Q. Advance Funding states that it had reached a level
15 of confidence and satisfaction with SCS before BOFI's
16 interference caused a breach in the relationship. Is Advance
17 Funding suggesting that the filing of this lawsuit caused SCS
18 to lose confidence and satisfaction in Advance Funding?

19 A. I think both, both incidences, yes. I think they
20 both have impacted that, both the phone call and the ensuing
21 lawsuit.

22 Q. What's your basis for that view?

23 A. The fact that I haven't been able to repair the
24 relationship, that, despite our winning both motions for
25 summary judgment, they're still not buying deals from us. So

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1 it's going to be an ongoing process, and it's probably going
2 to be starting again from ground zero and building back, and
3 it's going to take time, if it happens at all.

4 Q. Advance Funding alleges that, "In some instances,
5 there were additional fees and/or AF was forced to seek deals
6 net of state tax, i.e., AF absorbed the state tax
7 withholding." What additional fees is Advance Funding
8 referring to here?

9 A. Specifically, Great West. That's one of our
10 industrial funders, and they're very well-known throughout
11 the industry. The only problem is not everybody can get a
12 relationship with Great West because you have to have
13 financials in a certain -- financial background and a basis
14 for them to accept your warranties, your indemnification,
15 et cetera, et cetera. Advance does not have that; however,
16 it can get funding through Northeastern. Now, that's one of
17 the instances where Northeastern is in the chain, is the one
18 that assigns to Great West, and, actually, more often than
19 not, we'll make money on that transaction, even from his
20 brother, but, for the most part, he doesn't take any money
21 from his brother.

22 So, in Great West deals, they have a spreadsheet
23 that has an average life. It's very comprehensive. I'm not
24 a numbers person. I would be lying if I told you I
25 understand everything. It has a biannual, it has an annual

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1 rate, it has a Moody rating fee, and then it has sometimes a
2 fee if the first payment that you're buying is within a
3 certain proximity of closing, and that happens a lot. So we
4 would be paying that additional fee, we would be paying the
5 Moody fee, and, on top of that, Great West requires an
6 outside legal opinion, and the financial cost is borne by us.
7 And that ranges anywhere from 3 to \$6,000 per transaction.
8 So a lot of times that would price Great West out of it.
9 Whereas, their initial rate looks really attractive, but,
10 with the additional fees, not so attractive.

11 Q. Are there any deals listed in Exhibit 7 where Great
12 West provided the funding?

13 A. I'm not going to be able to determine that. Oh,
14 actually, I will be able to determine that because I know
15 what deals -- what states they buy. I'm not going to be able
16 to tell from initials. If I could see the client's name, I
17 would remember. I won't be able to tell from this list.

18 Q. Is Advance Funding claiming these additional fees
19 as part of its damages claim?

20 A. I didn't incorporate any of that.

21 Q. So no, okay.

22 A. I'm not saying that we wouldn't. I'm just saying
23 that I didn't incorporate any of that in these numbers that
24 you see.

25 Q. And I guess the same question with regard for

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1 Advance Funding's allegation that it was forced to seek deals
2 net of state tax or it would absorb the state tax
3 withholding; are the additional costs associated with that,
4 absorbing the state tax withholding, is that part of Advance
5 Funding's damages claim?

6 A. It is not in that spreadsheet. I didn't calculate
7 any additional costs. That's just pure difference in rates.

8 Q. Advance Funding alleges that, "In addition to lost
9 deals and lost profits, AF has been damaged in its reputation
10 with its funder, as was the intent of BOFI." How does
11 Advance Funding claim that it has been damaged in its
12 reputation with its funder?

13 A. Apparently, Eshel made comments to Scott Miller
14 that we had horrible files, unclean documents, made lots of
15 nasty, false allegations, and that clouded their mind. I'm
16 sure that they're second-guessing our files now.

17 Q. How do you know they're second-guessing your files?

18 A. They've told me.

19 Q. They've told you they're second-guessing your
20 files?

21 A. They've told me that they're not as comfortable, is
22 what I am saying.

23 Q. And that's because of what Mr. Bar-Adon told them?

24 A. Yes.

25 Q. That lack of comfort has to do with what exactly,

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1 with Advance Funding's files?

2 A. If I told you that file that I just sold to you, I
3 think some of those documents were doctored, or I think, you
4 know, that they don't send right things, or they don't --
5 there were a lot of nasty things said about the quality of
6 our documents and what we present. That would lead anybody
7 with a reasonable mind to question things that they've
8 already bought, much less things that they would buy in the
9 future. I think that's probably why he said to sell all 14
10 files, we don't want to own anything from Advance Funding.

11 Q. What did Mr. Bar-Adon say regarding the quality of
12 Advance Funding's documentation, to your knowledge?

13 A. I wish I could recite exactly. I had this
14 conversation, but I had several conversations preparing for
15 this deposition. He basically said that we were underhanded,
16 that -- I would be guessing. I can't recall the exact words.

17 Q. In response to Interrogatory No. 18, what evidence
18 does Advance Funding have that BOFI contacted SCS with the
19 intent of damaging Advance Funding's business relations with
20 SCS?

21 A. Oh, I can answer that one rather easily. For one,
22 that's not business practice normal in our industry, as I had
23 testified earlier. The normal thing to do, when you think
24 you've been wronged is to contact the other factoring
25 company. Eshel has all of our numbers, has our cell phone

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1 numbers, has no problem contacting us normally. For this
2 deal, however, he chose to go directly to the funder, which
3 he knows very well has absolutely nothing to do with the
4 transaction, merely purchased a closing binder. So that, in
5 and of itself, shows his intent because he clearly would have
6 come to us and said, hey, you guys are trampling on my
7 rights, here's what I think. We may or may not have argued
8 back -- I can tell you we would have argued back -- but that
9 conversation would have been with us, not with SCS.

10 Q. But SCS was involved in the transaction because SCS
11 became the beneficiary under the life insurance policy,
12 correct?

13 A. Ultimately, after the transaction.

14 Q. Right. And Mr. Bar-Adon didn't contact Scott
15 Miller until March 2014?

16 A. Correct.

17 Q. Well after SCS had become the beneficiary under
18 that policy, correct?

19 A. March of 2014? The deal closed in 2013. So that
20 would have been well after.

21 Q. Right. So SCS was involved in the transaction as
22 more than just a broker?

23 A. And how exactly would Eshel have known that?

24 Q. Do you know that he didn't know it?

25 A. I don't know any legal way he would have known it.

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1 Q. But do you know that he didn't know it?

2 A. How would I know if I haven't had any conversation
3 with Eshel about it?

4 Q. Okay. So the answer to the question is you didn't
5 know one way or the other whether he had knowledge that SCS
6 had become the beneficiary under the life insurance policy?

7 A. I have everything else that tells me that he
8 didn't.

9 Q. Advance Funding alleges that, "BOFI filed a
10 Complaint without performing even minimal background
11 investigation into the facts and circumstances leading to
12 AF's securing said statutorily required court authorization
13 of its lottery assignment from Ms. Venzant, which
14 investigation would have disproven all of the allegations
15 contained in BOFI's Complaint." Why does Advance Funding
16 assert that BOFI did not perform even minimal background
17 investigation into the facts and circumstances?

18 A. Oh, that's, quite honestly, a fact. They didn't
19 call Sheena one time to ask her, and supposedly she was still
20 in communication, such that she was still asking them for
21 advances, pursuant what they said, and they thought that the
22 transaction was still ongoing. So, if they thought that
23 there was something that we had done to induce her to get out
24 of that contract and enter a contract with Advance, that's
25 one person they could have asked that supposedly had a really

Page 215, line 9 - page 216, line 2: Irrelevant,
speculation, lack of personal knowledge, hearsay

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1 good relationship and was waiting for money from them. The
2 second -- I can go further.

3 Q. Yeah, let me stop you, and then you can continue.
4 How do you know they didn't reach out to Ms. Venzant?

5 A. We absolutely asked sales to find out.

6 Q. And they spoke with Ms. Venzant?

7 A. Yes.

8 Q. And she said, no, I haven't talked to them?

9 A. They never asked me that.

10 Q. They never asked -- I'm sorry, you have to clarify.

11 A. Whether or not -- you said that we never
12 contacted -- or he never contacted Sheena Venzant to see if
13 they had trampled or we had trampled on their rights or what
14 have you. That was never a discussion that they had with
15 their own client.

16 Q. My question is: Do you know if BOFI tried to reach
17 out to Ms. Venzant?

18 A. I don't know what tried means.

19 Q. Attempt to call her.

20 A. Okay. She he has answering machine; she has text;
21 she has e-mail. I can tell you that they made no attempt in
22 either of those, pursuant to what she told sales.

23 Q. That's my question.

24 A. Yes. That's my answer.

25 Q. So sales contacted Ms. Venzant, and she said, they

Page 215, line 9 - page 216, line 2:
Irrelevant, speculation, lack of personal
knowledge, hearsay

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1 have not contacted me, and, based on that --

2 A. Not that they have not contacted me, that they have
3 not contacted me in this regard.

4 Q. Okay. Do you know when sales spoke with
5 Ms. Venzant about that?

6 A. I spoke with sales in preparation for this
7 deposition. So I have no idea of the actual date, but there
8 was definitely conversation.

9 Q. So go ahead. So one basis for this contention that
10 BOFI didn't conduct an adequate investigation is that they
11 didn't communicate with Ms. Venzant?

12 A. Right.

13 Q. What's another reason?

14 A. The second one would be Mr. Onwubere.

15 THE WITNESS: I'll spell that one for you.

16 A. That was their, we now know, ex-employee, but, at
17 the time of their transaction, was the current employee. And
18 he could have communicated that he was the one that told her
19 how to cancel and had no involvement with us. She hadn't
20 even contacted us at that point. That right there would have
21 told them there's no way that Advance could have induced her
22 to do anything. We hadn't even come back into the picture
23 since her initial win.

24 Third, the insurance agent. Supposedly, that's how
25 they found out, was when any -- something with the insurance,

Page 217, line 13 - page 218, line 9:
Irrelevant, speculation, lack of personal
knowledge, hearsay

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1 is what they said. Well, they never made the second premium
2 payment, and they knew that she couldn't make that premium
3 payment, and, knowing that they can't invest in speculative
4 investments, why would they not have contacted the insurance
5 company to make sure that that second premium was paid, as
6 that's the only insurance for that transaction? So, if
7 they're still doing a deal with her and still thought that
8 they were going to close, that insurance policy would have
9 been paramount to their transaction.

10 Q. The second invoice on the policy, where did it go;
11 do you know? Where was it sent?

12 A. I'm not involved with the insurance company, so --

13 Q. You don't know where it was sent?

14 A. But, from what I understand, they were the ones
15 that put her in touch with the group that she got the policy
16 from. It was not Advance.

17 Q. Sorry. BOFI put Ms. Venzant in touch with the
18 group that she got the policy from; that's what you
19 understood?

20 A. That's my understanding. They facilitated the
21 insurance policy, yes, sir. That was not a policy that she
22 had prior to the BOFI transaction.

23 Q. This was in connection with the BOFI transaction,
24 you're talking about?

25 A. Yes, and they paid the initial premium.

Page 217, line 13 - page 218, line
9: Irrelevant, speculation, lack
of personal knowledge, hearsay

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1 Q. Right. But do you have any idea where the second
2 the invoice for the second annual premium was sent?

3 A. No, but I know that I would have at least
4 calendared the premium payments, knowing that that was such a
5 paramount document, and provided the security that I need to
6 do a transaction. She was clearly asking for advances, so
7 they knew well that she wasn't going to pay that premium.

8 Q. Anything else? Any other facts that you can cite
9 to support Advance Funding's assertion that BOFI conducted an
10 inadequate investigation?

11 A. No. I think that about sums it up.

12 Q. Some of these issues we've talked about in the
13 context of our discussion over the last few minutes, but,
14 other than what you've just discussed, how else would that
15 investigation have disproven all of the allegations contained
16 in BOFI's Complaint?

17 A. How else would the -- the time line wouldn't have
18 changed. Clearly, they would have known by discussing with
19 Sheena herself, or with Onwubere, that they were talking, and
20 Advance wasn't involved. That's very clear.

21 Q. So, if they had spoke -- your view is that, if they
22 had spoken with Ms. Venzant and spoken with Mr. Onwubere --

23 A. Or, one or the out.

24 Q. One or the other -- that whatever Ms. Venzant or
25 Mr. Onwubere told them would have cleared everything up, BOFI

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1 could have trusted what they told them, and should have just
2 moved on at that point?

3 A. Oh, I'm not saying that's the only thing. I gave
4 you several things.

5 Q. Okay. So what else would --

6 A. You need more than three?

7 Q. In what other way would a more comprehensive
8 investigation have disproven all of the allegations contained
9 in BOFI's Complaint?

10 A. Basically, all their allegations come from a
11 tortious interference. Tortious interference is a legal
12 term, requires contract rights. Eshel is a lawyer; he knows
13 he didn't have those contract rights. He was simply mad
14 because we did what he could not, and there's bad blood
15 between the companies, and he intentionally went and damaged
16 our funding source. There's no other reason that he would go
17 directly to a funder, who has absolutely nothing to do with
18 the transaction.

19 BOFI, initially, in this industry, was a funder
20 only. It was only after they changed their structure that
21 they began initiating originating deals. And, with the
22 complement of Eshel, who has a wealth of experience in both
23 structured and lottery, he knows very well. There is no
24 other conclusion I can draw, than this was malicious,
25 willful, intentional, and he succeeded.

Page 220, lines 7-25: Irrelevant, speculation, lack of personal knowledge, hearsay, legal conclusion

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1 MR. MANVILLE: I think those are all the
2 questions I have.

3 MS. FOX: We're done.

4 MR. MANVILLE: Thank you.

5 THE WITNESS: Thank you.

6 THE VIDEOGRAPHER: We are going off the
7 record. The time is 4:35 p.m. This is the end of Disc
8 No. 4.

9 (Signature reserved.)

10 (Deposition concluded at 4:35 p.m.)

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A F F I D A V I T

STATE OF WASHINGTON)
) SS.
COUNTY OF KING)

I, MONICA L. RAY, hereby declare under penalty of

perjury that I have read the foregoing deposition and that

the testimony contained herein is a true and correct

transcript of my testimony, noting the corrections attached.

MONICA L. RAY

Date:

C E R T I F I C A T E

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

I, the undersigned Washington Certified Court Reporter, pursuant to RCW 5.28.010, authorized to administer oaths and affirmations in and for the State of Washington, do hereby certify: That the foregoing deposition of the witness named herein was taken stenographically before me and reduced to a typed format under my direction;

That, according to CR 30(e), the witness was given the opportunity to examine, read and sign the deposition after same was transcribed, unless indicated in the record that the review was waived;

That I am not a relative or employee of any attorney or counsel or participant and that I am not financially or otherwise interested in the action or the outcome herein;

That the deposition, as transcribed, is a full, true and correct transcript of the testimony, including questions and answers and all objections, motions and examinations and said transcript was prepared pursuant to the Washington Administrative Code 308-14-135 preparation guidelines.

Wade J. Johnson, Certified Court
Reporter 2574 for the State of Washington
residing at Seattle, Washington.
My CCR certification expires on 09/18/16.

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September 25, 2015

To: SUSAN RAE FOX
Ryan Swanson
1201 3rd Avenue, Suite 3400
Seattle, WA 98101-3034
fox@ryanlaw.com

Re: BOFI Federal Bank v. Advance Funding LLC, et al.
Deposition of: MONICA L. RAY
Date Taken: September 22, 2015
Cause No. 2:14-CV-00484-BJR

PLEASE TAKE NOTICE THAT:

Enclosed are two forms: "Affidavit" and a "Correction Sheet."
Instruct the deponent to review the deposition, record any
corrections over his signature on the Correction Sheet, and
sign the Affidavit. If there are corrections, please furnish
other counsel with copies. Return both forms to this office
for their inclusion in the original transcript.
The transcript will be forwarded to the appropriate party

.

Thank you for your assistance in obtaining signature.

By: Wade J. Johnson, RPR

cc: Duncan E. Manville

EXHIBIT B

BofI Federal Bank v. Advance Funding LLC, et al.
United States District Court for the Western District of Washington
Cause No. 2:14-cv-00484-BJR

SCHEDULE OF WITNESSES

Witnesses Proposed by Plaintiff BofI Federal Bank			
Name	Description of Testimony	Objections	Length
Daniel Hefner	<p>Mr. Hefner will testify as to the following and related matters:</p> <ul style="list-style-type: none"> ○ Background regarding the Lottery Payment Assignment Agreement between BofI Federal Bank (“BofI”) and Sheena Venzant and the Life Contingent Payment Addendum between BofI and Ms. Venzant, both effective as of March 7, 2012 (collectively the “BofI Agreement”); and the existence, terms and validity of the BofI Agreement. ○ Other communications and documents before and after the effective date of the BofI Agreement relating to the BofI Agreement. ○ The UCC statements that BofI filed in an effort to protect its investment in the lottery income stream that was the subject of the BofI Agreement. ○ The life insurance policy that BofI obtained to pay benefits to BofI should she Ms. Venzant die prematurely (the “Policy”). ○ BofI’s holding off on obtaining a court a court order pursuant to RCW 67.70.100 approving Ms. Venzant’s assignment of lottery installments to BofI and on making the lump-sum payment to Ms. Venzant, pending expiration of the contestability period and suicide exclusion in 	<p>Defendants will object to any proffered testimony from this witness that is not based on personal knowledge, that is irrelevant or immaterial to the issues in the case, and which constitutes hearsay.</p>	<p>2 hours on direct</p>

Witnesses Proposed by Plaintiff BofI Federal Bank			
Name	Description of Testimony	Objections	Length
	<p>the Policy.</p> <ul style="list-style-type: none"> ○ Cash advances requested by Ms. Venzant and paid by BofI. ○ BofI's non-receipt from Ms. Venzant of any communication purporting to cancel the BofI Agreement. ○ BofI's non-receipt from Defendants of any notice of their lottery assignment transaction with Ms. Venzant or of the action filed by Advance Funding LLC ("Advance") to obtain the Thurston County Superior Court's approval of Ms. Venzant's assignment of lottery installment payments to Advance. 		
Richard E. Miller III	<p>Mr. Miller will testify as to the following and related matters:</p> <ul style="list-style-type: none"> ○ Communications between Settlement Collection Service, LLC ("SCS"), on behalf of itself and the Kirk A. Tovey Revocable Trust ("Tovey"), about providing funding for Defendants' lottery assignment transaction with Ms. Venzant. ○ The agency relationship between SCS and Ms. Schwartz. ○ Funding provided by Tovey for Defendants' transaction with Ms. Venzant. ○ The transfer of ownership of Ms. Venzant's life insurance policy to SCS. ○ Profits earned by SCS and Tovey on the Venzant transaction. 	Defendants object to any proffered testimony that is irrelevant to issues in the case	2 hours on direct

Witnesses Proposed by Defendants Kirk A. Tovey, Individually and as Trustee of the Kirk A. Tovey Revocable Trust, and Settlement Collection Service, LLC			
Name	Description of Testimony	Objections	Length
Sheena Venzant	Live or by Declaration regarding the cancellation of her Agreement with BofI	BofI will object to any proffered testimony from this witness that is not based on personal knowledge, that is irrelevant or immaterial to the issues in the case, and that constitutes hearsay.	If live testimony is required, estimated 2 hours on direct
Richard Miller, III	Mr. Miller will testify regarding facts to refute the plaintiff's allegations and alleged damages, including facts surrounding the lottery assignment transaction from Sheena Venzant	BofI will object to any proffered testimony from this witness that is not based on personal knowledge, that is irrelevant or immaterial to the issues in the case, and that constitutes hearsay.	1.5 hours on direct
Monica Ray	Ms. Ray may testify, via video link if necessary to authenticate documents to be offered as exhibits	BofI will object to any proffered testimony from this witness that is not based on personal knowledge, that is irrelevant or immaterial to the issues in the case, and that constitutes hearsay.	½ hour on direct

EXHIBIT C

BofI Federal Bank v. Advance Funding LLC, et al.
United States District Court for the Western District of Washington
Cause No. 2:14-cv-00484-BJR

PLAINTIFF BOFI FEDERAL BANK'S EXHIBIT LIST

Exhibit Number	Description	Objections
P1	Lucky for Life Scratch Game 1068 Prize Payment Options form dated November 16, 2011 (Dkt. 39, Ex. A)	
P2	Notes made by current and former employees of BofI Federal Bank regarding their communications with Sheena Venzant (Dkt. 39, Ex. B)	Hearsay, lack of proper authentication
P3	Lottery Payment Assignment Agreement between BofI Federal Bank and Sheena Venzant, effective as of March 7, 2012 (Dkt. 39, Ex. C)	
P4	Life Contingent Payment Addendum between BofI Federal Bank and Sheena Venzant, effective as of March 7, 2012 (Dkt. 39, Ex. D)	Lack of proper authentication
P5	Declaration executed by Sheena Venzant on March 13, 2012 to support BofI Federal Bank's application, pursuant to RCW 67.70.100, for court order approving her assignment of lottery installment payments to BofI (Dkt. 39, Ex. E)	Hearsay, lack of proper authentication; Declarant has repudiated declaration
P6	One-page disclosure statement that BofI Federal Bank provided to Sheena Venzant, pursuant to RCW 67.70.100(2)(c)(iii), before Ms. Venzant executed her March 13, 2012 declaration (Dkt. 39, Ex. F)	
P7	UCC Financing Statement that BofI Federal Bank filed on March 9, 2012 (Dkt. 39, Ex. G)	
P8	UCC Financing Statement Amendment that BofI Federal Bank filed on March 14, 2012 (Dkt. 39, Ex. H)	
P9	Reliastar Life Insurance Company Policy No. AD20532551, insuring Sheena Venzant's life effective June 21, 2012 (Dkt. 39, Ex. I)	
P10	Email string between Sheena Venzant, McLloyd Onwubere, Eshel Bar-Adon and Michael Popper, dated from August 25, 2012	

Exhibit Number	Description	Objections
	to August 28, 2012 (Dkt. 39, Ex. J)	
P11	Email string between Sheena Venzant, McLloyd Onwubere, Eshel Bar-Adon and Michael Popper, dated August 29, 2012 (Dkt. 39, Ex. K)	
P12	Email string between Sheena Venzant and Chris Husong, dated from February 19, 2014 to February 21, 2014 (Dkt. 39, Ex. L)	Hearsay, lack of proper authentication
P13	Defendant Advance Funding, LLC's Responses and Objections to Plaintiff's First Interrogatories and Requests for Production	Not relevant, hearsay, improper exhibit
P14	Defendant Settlement Collection Service, LLC's Responses to Plaintiff's First Interrogatories and Requests for Production	Not relevant, hearsay, improper exhibit
P15	Defendant Kirk A. Tovey, as Trustee of the Kirk A. Tovey Revocable Trust, Responses to Plaintiff's First Interrogatories and Requests for Production	Not relevant, hearsay, improper exhibit
P16	Complaint for Tortious Interference with Contract, Unjust Enrichment, Declaratory Relief and Jury Demand (Dkt. 1)	Not relevant, cumulative, improper exhibit
P17	Defendants' Answer, Affirmative Defenses and Advance Funding LLC's Counterclaims	Not relevant, improper exhibit
P18	August 12, 2013 letter from Andrea Simantz to Sheena Venzant (Bates No. Defs 000119)	Not relevant, lack of authentication
P19	Email string last dated June 28, 2013 between Monica L. Ray, Richard E. Miller Jr., Richard E. Miller III, Scott Miller and Amy Schwartz (Bates Nos. Defs 000334-000336)	
P20	September 23, 2013 letter from ING ReliaStar Life Insurance Company to Sheena Venzant (Bates No. Defs 000118)	Hearsay, lack of proper authentication
P21	Defendant Advance Funding LLC's Supplemental Responses to Interrogatories 17 and 18, with attachments	Not relevant, improper exhibit
P22	Email string last dated February 19, 2014 between Sheena Venzant, Chris Husong and Michael Popper (Bates No. BOFI-00096)	
P23	Email string last dated July 2, 2013 between Elyse Edwards, Monica L. Ray, Amy	

Exhibit Number	Description	Objections
	Schwartz, Richard E. Miller III, Richard E. Miller Jr., Scott Miller and Connie Younan, with attachments (Bates Nos. Defs 000559-000565)	
P24	Email string last dated July 12, 2013 between Monica L. Ray, Connie Younan, Elyse Edwards and Richard E. Miller III (Bates Nos. Defs 000477-000478)	Not relevant, hearsay
P25	Email string last dated February 12, 2014 between Chris Husong and Sheena Venzant (Bates Nos. BOFI-00091 – BOFI00094)	
P26	February 18, 2014 email message from Chris Husong to Sheena Venzant (Bates No. BOFI-00095)	Hearsay, lack of proper authentication
P27	July 11, 2013 fax cover sheet and letter from Scott Miller to ING Customer Service Center (Bates Nos. Defs 000122, 000121, 000124-000128)	Not relevant
P28	Resolutions of Settlement Collection Services, LLC, dated February 8, 2008 (Bates No. Defs 000123)	Not relevant
P29	Email string dated May 13, 2013 and ending with an email message from Monica L. Ray to Jessica Elster and Elyse Edwards (Bates No. Defs 00706)	Hearsay, lack of proper authentication, not relevant, out of context
P30	Email string last dated May 14, 2013 and ending with an email message from Monica L. Ray to Barbara Guerra and Elyse Edwards (Bates No. Defs 00590)	Hearsay, lack of proper authentication, not relevant, out of context
P31	Email string last dated May 22, 2013 between Monica L. Ray, Richard E. Miller III, Richard E. Miller Jr. and Scott Miller (Bates Nos. Defs 000513-000516, AF FRCP 30(b)(6) Deposition, Ex. 2)	
P32	Email string last dated March 13, 2014 between Monica L. Ray, Richard E. Miller Jr., Richard E. Miller III, Scott Miller and Amy Schwartz (Bates Nos. Defs 000284-000290, AF FRCP 30(b)(6) Deposition, Ex. 3)	
P33	Email string last dated March 12, 2014 between Monica L. Ray, Amy Schwartz,	

Exhibit Number	Description	Objections
	Richard E. Miller III, Richard E. Miller Jr. and Scott Miller (Bates Nos. Defs 000497-000499, AF FRCP 30(b)(6) Deposition, Ex. 5)	
P34	Lottery Prize Assignment Agreement between Sheena Venzant and Advance Funding LLC (AF FRCP 30(b)(6) Deposition, Ex. 6)	
P35	Order Granting Petition and Approving Lottery Prize Assignment, dated June 14, 2013	
P36	Table of lottery assignment transactions (Bates No. Defs 00584, AF FRCP 30(b)(6) Deposition, Ex. 7)	Not relevant
P37	Table of lottery assignment transactions (Bates No. 00583, AF FRCP 30(b)(6) Deposition, Ex. 8)	Not relevant
P38	Table of lottery assignment transactions (Bates No. 000183, AF FRCP 30(b)(6) Deposition, Ex. 9)	Not relevant
P39	Table of lottery assignment transactions (Bates No. 000184, AF FRCP 30(b)(6) Deposition, Ex. 10)	Not relevant
P40	Email chain ending on August 21, 2012 (Bates Nos. BOFI-00055-00056)	
P41	Email chain ending October 18, 2012 (Bates Nos. BOFI-00029-00041)	Hearsay, lack of proper authentication, cumulative and duplicative
P42	Email from McLloyd Onwubere to Michael Popper (Bates Nos. BOFI-00053-00054)	
P43	Petition for Order Approving Lottery Prize Assignment (Bates Nos. Defs 52-84)	
P44	Email string between Monica Ray, Richard E. Miller Jr., Richard E. Miller III, Scott Miller, Amy Schwartz, Connie Younan and Elyse Edwards, with attachments (Bates Nos. Defs 337-442)	
P45	Email string ending on July 1, 2013 (Bates Nos. Defs 00587-00589)	
P46	Email string ending on July 1, 2013 (Bates Nos. Defs 00596-00598)	
P47	Email string between Elyse Edwards, Monica Ray, Amy Schwartz, Richard E. Miller III,	

Exhibit Number	Description	Objections
	Richard E. Miller Jr. and Scott Miller, with attachment (Bates Nos. Defs 493-496)	

DEFENDANTS' EXHIBIT LIST

Exhibit Number	Description	Objections
D1	Loan Agreement dated March 7, 2012 (BOFI 00009-14)	
D2	Demand Promissory Note dated March 7, 2012 (BOFI 00015-18)	
D3	First Amendment of Loan Agreement dated July 2012 (BOFI 00019-20)	
D4	Second Amendment of Loan Agreement dated September 2012 (BOFI 00021-23)	
D5	Declaration of Sheena Venzant, with exhibits (DKT 30)	Hearsay
D6	Email chain ending August 3, 2012 (BOFI 00035-37)	Not a complete exhibit
D7	Email from Sheena Venzant dated August 21, 2012 (BOFI 00055-56)	
D8	Email from Onwubere dated August 21, 2012 (DKT. 111, p. 12)	Not a complete exhibit
D9	Email chain ending August 28, 2012 (DKT 111 p. 14-15)	
D10	Email chain ending August 29, 2012 (DKT 111, p. 17)	
D11	Sheena Venzant's Handwritten cancellation letter dated February 5, 2013 (Defs 000571-572)	
D12	Email chain ending February 12, 2013 (BOFI 00082-83)	
D13	Email from Sheena Venzant dated May 15, 2013 (Defs 00600-601)	
D14	Email from Barbara Guerra dated May 16, 2013 (Defs 00703-704)	
D15	Email from Sheena Venzant dated July 1, 2013 (Defs 00597-598)	Not a complete exhibit
D16	Email from Sheena Venzant dated July 1,	Not a complete exhibit

Exhibit Number	Description	Objections
	2013 (Def's 00588-89)	
D17	Email from Sheena Venzant dated February 12, 2014 (BOFI 00084)	
D18	Email from Sheena Venzant dated February 19, 2014 (DKT 111, p.32)	
D19	Fully executed Stipulation Regarding Amended Order, In re Petition of Advance Funding LLC, Thurston County Superior Court Cause No. 13-2-01206-2, dated February 18, 2016	
D20	First Amended Order Granting Petition and Approving Lottery Prize Assignment, In re Petition of Advance Funding LLC, Thurston County Superior Court Cause No. 13-2-01206-2, dated February 18, 2016	